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## State Legislative Update

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# State Legislative Update

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## I. STATE LEGISLATIVE FOCUS

### A. *Expansion of Collaborative Law Procedures: Texas Senate Bill 942*<sup>1</sup>

**Bill Number:** Texas Senate Bill 942  
**Summary:** This bill authorizes collaborative law procedures for civil cases other than family law disputes by creating a new chapter in the Texas Practice and Remedies Code.  
**Status:** Left pending in Texas Senate Jurisprudence Committee as of March 28, 2007.

#### *1. Introduction*

Collaborative law is a relatively new dispute resolution method by which parties mutually agree to negotiate a settlement in good faith.<sup>2</sup> Either party may terminate the collaborative process at will and present the matter to a court for a decision.<sup>3</sup> Upon termination of the collaborative process, both attorneys must withdraw and cease all participation in the case.<sup>4</sup> The continuing saturation of court dockets and the expense of litigation require the promotion of viable, alternative means to resolve disputes. Collaborative law as authorized under Texas Senate Bill 942 is an especially attractive process because it demands cooperation between the disputing parties while allowing either party to terminate participation at any time.

Currently, collaborative law's role is limited because many practitioners believe its use compromises traditional ethical standards.<sup>5</sup> Texas, North Carolina,

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\* The State Legislative Update is an annual article appearing in the fall edition of the Journal of Dispute Resolution and is compiled and written by selected Journal members. It is designed to provide readers with a listing of pertinent legislation affecting alternative dispute resolution. The Update also provides a more detailed look at certain bills to their importance and/or novelty within the ADR field. If you have comments or suggestions about this feature, please feel free to email the Journal of Dispute Resolution editorial board at [umclawjournal@missouri.edu](mailto:umclawjournal@missouri.edu).

1. S. 942, 80th Gen. Assem., 2007 Reg. Sess. (Tex. 2007).

2. P. Oswin Chrisman, et al., *Collaborative Practice Mediation: Are We Ready to Serve This Emerging Market?*, 6 PEPP. DISP. RESOL. J. 451, 452 (2006).

3. *Id.*

4. *Id.*

5. Christopher Fairman, *A Proposed Model Rule for Collaborative Law*, 21 OHIO ST. J. ON DISP. RESOL. 73 (2005) ("Collaborative law's glass ceiling is legal ethics. Unlike other forms of alternative dispute resolution, collaborative law's growth is hampered by questions of compatibility with rules of professional ethics [citation omitted]. Critics, including some collaborative law practitioners, find it

and California already provide for collaborative law procedures in the family law arena.<sup>6</sup> Senate Bill 942 is unique, however, because it enacts these procedures to resolve civil disputes in general. The bill is not expected to have significant fiscal implications on local governments or the State, and the Office of the Attorney General believes it will not cause a significant increase in case filings or complaints.<sup>7</sup>

Senate Bill 942 was introduced to the Texas Senate by State Senator Carona on February 27, 2007.<sup>8</sup> The bill was first referred to the State Affairs committee on March 7, 2007, before it arrived in the Jurisprudence Committee on March 15, 2007.<sup>9</sup> After a public hearing, the bill was left pending in the Jurisprudence Committee on March 28, 2007.<sup>10</sup>

## 2. The Bill

Senate Bill 942 provides for collaborative law procedures to serve the Texas policy of encouraging peaceable, voluntary, and early settlements of pending litigation.<sup>11</sup> In order to use collaborative law procedures, parties are required to reach a written agreement and sign it along with their attorneys.<sup>12</sup> The writing provides that both parties will use their best efforts to settle the dispute in good faith.<sup>13</sup> A court may not intervene except to approve the settlement agreement, make legal pronouncements, and sign orders to make agreements legally binding.<sup>14</sup> Significantly, the attorneys are barred from serving as litigation counsel during the collaborative law process except that they may request the court to approve settlement agreements.<sup>15</sup>

While parties can include additional good faith terms, the bill requires that an agreement to use collaborative law contain four minimum provisions.<sup>16</sup> First, the parties must agree to "full and candid exchange of information" in order to produce an accurate evaluation of the case.<sup>17</sup> Second, court intervention must be suspended while the parties are engaged in collaborative law procedures.<sup>18</sup> Third, the parties must all agree on the hiring of experts.<sup>19</sup> Finally, counsel involved in

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difficult to square the principles and practices of collaborative law with the professional rules of ethics concerning everything from zealous advocacy to confidentiality to terminating representation [citation omitted].").

6. TEX. FAM. CODE ANN. § 6.603 (2006); TEX. FAM. CODE ANN. § 153.0072 (2002); N.C. GEN. STAT. ANN. § 50-70 to 50-79 (2003); CAL. FAM. CODE § 2010-2013 (West 2004).

7. Legis. Budget Board, *Fiscal Note*, <http://www.capitol.state.tx.us/tlodocs/80R/fiscalnotes/pdf/SB00942I.pdf> (last visited Nov. 6, 2007).

8. S. 942, 80th Gen. Assem., 2007 Reg. Sess. (Tex. 2007), Status, available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=SB942> (last visited Sept. 17, 2007).

9. *Id.*

10. *Id.*

11. S. 942, 80th Gen. Assem., 2007 Reg. Sess. (Tex. 2007).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

the collaborative law procedure must withdraw from the matter if the parties fail to settle.<sup>20</sup>

The bill provides that a collaborative law settlement agreement is enforceable if it satisfies two conditions: the agreement must contain a boldfaced, capitalized, or underlined statement that the agreement is not subject to revocation, and it must be signed by each party and its attorney.<sup>21</sup>

If a court is notified at least thirty days before trial that the parties are using collaborative law procedures, it may not set a hearing date, impose discovery deadlines, require compliance with scheduling orders, or dismiss the case.<sup>22</sup> If the parties cannot reach agreement, they must file a status report by the 180th day after the written agreement to collaborate took effect.<sup>23</sup> They must then file a status report by the first anniversary of the written agreement with a motion for continuance if they wish to continue attempting to settle using collaborative law.<sup>24</sup> Finally, if there is no settlement within two years of the lawsuit's filing, a court may schedule trial.<sup>25</sup>

### 3. Conclusion

This bill seeks to do what no other state has attempted and, thus, may be slightly ahead of its time. With just three states setting forth procedures for collaborative law in the family law arena, this statute would be a bold endorsement of collaborative law in the courts. If collaborative law procedures have been effective in family law disputes, however, it is logical to use these procedures to solve other disputes in an expedited, cost effective way.

#### *B. Arbitration Procedure for Disputes between Insurance Carriers and-Health Car Providers: Delaware House Bill 92<sup>26</sup>*

Bill Number: Delaware House Bill 92  
 Summary: This bill creates an arbitration procedure for payment disputes between insurance carriers and health care providers.  
 Status: Signed by Governor on June 28, 2007

### 1. Introduction

Disputes often arise between health care providers and insurance carriers regarding medical service payments.<sup>27</sup> Unless health care providers and insurance carriers have arbitration provisions in their contracts, these parties will be subject

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20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. H.R. 92, 144th Gen. Assem. 2007 Reg. Sess. (Del. 2007), available at [http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/HB+92/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/HB+92/$file/legis.html?open) (last visited Nov. 26, 2007).

27. *Id.*

to litigation.<sup>28</sup> The arbitration process established by House Bill 92 creates a forum for health care providers and insurance carriers to resolve payment disputes in a fair, objective manner without the costs of litigation.

This bill follows a continuing trend in Delaware dealing with arbitration. Delaware has a history of creating arbitration processes for insurance-related complaints. Delaware previously created an arbitration process for disputes revolving around homeowners' insurance coverage disputes, and Delaware has also provided arbitration procedures for disputes involving health insurance coverage.<sup>29</sup> House Bill 92 extends Delaware's involvement in health insurance-related arbitration.

House Bill 92 was filed on March 22, 2007, by Representative Deborah Hudson and Senator Patricia Blevins, and assigned to the Economic Development/Banking & Insurance Committee.<sup>30</sup> After being reported out of the committee on its merits, House Amendment 1 to House Bill 92 was introduced.<sup>31</sup> House Amendment 1 limited the scope of the bill by removing long-term care facilities and hospitals.<sup>32</sup> These facilities were removed because their size and bargaining power generally allow them to have "acceptable arbitration provisions written into their contractual agreements with insurance carriers."<sup>33</sup> House Amendment 1 passed the House by voice vote and House Bill 92 passed the House unanimously on May 16, 2007.<sup>34</sup> In the Senate, House Bill 92 was assigned to the Insurance and Elections Committee which reported the bill out of committee on its merits.<sup>35</sup> After the approval of Senate Amendment 1, which made minor technical changes,<sup>36</sup> the bill passed the Senate unanimously on June 13, 2007.<sup>37</sup> The new version of the bill incorporating Senate Amendment 1 passed the House of Representatives unanimously on June 21, 2007, and was signed by Governor Ruth Ann Minner on June 28, 2007.<sup>38</sup>

## 2. The Bill

House Bill 92 seeks to create a low-cost forum for health care providers and insurance carriers to settle payment disputes.<sup>39</sup> The bill requires insurance carri-

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28. *Id.*

29. 18 DEL. CODE ANN. § 332 (2007); 18 DEL. CODE ANN. § 333 (2007).

30. H.R. 92, 144th Gen. Assem., 2007 Reg. Sess. (Del. 2007), Summary, available at <http://legis.delaware.gov/LIS/LIS144.NSF/vwLegislation/HB+92?Opendocument> (last visited Nov. 26, 2007).

31. *Id.*

32. H.A. 1 for H.R. 92, 144th Gen. Assem., 2007 Reg. Sess. (Del. 2007), available at [http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/HA+1+to+HB+92/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/HA+1+to+HB+92/$file/legis.html?open) (last visited Nov. 26, 2007).

33. *Id.*

34. H.R. 92, 144th Gen. Assem., 2007 Reg. Sess. (Del. 2007), Summary.

35. *Id.*

36. S.A. 1 for H.R. 92, 144th Gen. Assem., 2007 Reg. Sess. (Del. 2007), available at [http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/SA+1+to+HB+92/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/SA+1+to+HB+92/$file/legis.html?open) (last visited Nov. 26, 2007).

37. H.R. 92, 144th Gen. Assem., 2007 Reg. Sess. (Del. 2007).

38. *Id.*

39. "Health care providers" is defined as "a person, corporation, facility or institution licensed by the State pursuant to Title 24 or Title 16 of the Delaware Code to provide health care professional services." The term does not include facilities that provide treatments relying solely on spiritual means.

ers, when requested by the provider, to submit all disputes with health care providers regarding reimbursement for individual claims for services performed by the health care provider to arbitration.<sup>40</sup> The scope of the arbitration is limited to payment disputes.<sup>41</sup> The arbitration cannot include disputes regarding whether a patient was a policyholder of the insurance company at the time of service, disputes that are already pending before a court of law, or disputes included under an exempted insurance carrier's own arbitration program.<sup>42</sup>

Before requesting arbitration, the health care provider must attempt to informally resolve the dispute with the insurance carrier.<sup>43</sup> The health care provider must also request arbitration within sixty days of receiving reimbursement decisions from the insurance carrier.<sup>44</sup> By submitting itself to arbitration, the health care provider agrees that it will not bill its patient for any differences between the amount charged and the amount awarded—if any—by the arbitrator.<sup>45</sup> This provision only applies if the health care provider is forbidden from billing for said difference by the terms of its contract with the insurance carrier.<sup>46</sup>

The arbitration program has been placed under the supervision of the Delaware Department of Insurance.<sup>47</sup> The Commissioner of the Department of Insurance is given a great deal of discretion in the implementation of the program. The Commissioner establishes the panel of arbitrations and selects an arbitrator for each request.<sup>48</sup> The Commissioner is also responsible for the creation of a schedule of fees, not to exceed \$100, to be charged to health care providers.<sup>49</sup> While the health care provider is responsible for paying the arbitration fee, the arbitrator can award the fee to the provider if the provider prevails.<sup>50</sup>

### 3. Conclusion

Delaware House Bill 92 provides a non-litigation option for health care providers to contest decisions made by insurance carriers to refuse their bills. Many small health care providers lack the bargaining power to deal fairly with insurance carriers. This allows insurance carriers to apply pressure on health care providers when entering agreements. Litigation can often be the only recourse available to health care providers against insurance carriers, and House Bill 92 provides an alternate forum. This bill ensures health care providers are given an inexpensive and fair forum to settle their payment disputes with insurance companies.

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"Insurance carrier" refers to any entity that provides health insurance in Delaware. H.R. 92, 144th Gen. Assem., 2007 Reg. Sess. (Del. 2007).

40. *Id.* However, it is possible for the Commissioner of the Department of Insurance to create regulations exempting an insurance carrier if it maintains "a substantially similar program." *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

*C. Mandatory Mediation in Child Custody Disputes: Three Approaches*

Bill Numbers:	New York Senate Bill 2913 (companion, Assembly Bill 3458), Virginia Senate Bill 947, North Dakota House Concurrent Resolution 3004.
Summary:	These bills demonstrate three different approaches to the implementation of mandatory mediation in child custody disputes.
Status:	New York (to Senate Committee on Social Services, Children and Families on February 15, 2007); Virginia (left in Committee on February 6, 2007); North Dakota (failed to pass Senate on March 22, 2007).

*1. Introduction*

In recent years, family law cases have been appearing on court dockets at an alarming rate. Unfortunately, traditional courtrooms may not be the most appropriate place for resolving domestic issues. Issues of child custody, child support, and visitation involve ongoing relationships that can be affected negatively by the adversarial court process.<sup>51</sup> As a result, many states have turned to alternative dispute resolution—specifically mediation—in an attempt to resolve issues as amicably as possible.<sup>52</sup> Though legislatures are increasingly turning to mediation for a variety of family law disputes, this article will concentrate on the use of mandatory mediation in the child custody dispute context.

Mandatory mediation in the child custody arena is preferred by many legislatures because it facilitates the development of an agreement that assures the child “close and continuing contact with both parents that is in the best interest of the child. . . .”<sup>53</sup> The face-to-face nature of mediation ideally “infuse[s] some humanity into what otherwise may be a most inhumane process, and reduce[s] the ‘acrimony that may exist between the parties.’”<sup>54</sup> Proponents of mandatory mediation have also pointed out that it helps solve problems such as overcrowded court dockets and “the dissatisfaction many parties feel toward the courts’ treatment of divorce and divorce-related issues.”<sup>55</sup> Furthermore, by empowering the parties to create arrangements that a trial court might not consider, mediation expands the spectrum of possible solutions to domestic disputes.<sup>56</sup>

51. Robin Moore, *Indirect Representation of the Child in Custody Disputes*, 16 J. CONTEMP. LEGAL ISSUES 193, 194 (2007) (“For many if not most divorcing parents, mediation provides a smoother, less painful avenue than litigation to resolve custody issues.”).

52. Lisa Bench Nieuwveld, *Florida Continues to Lead the Nation in Mediation*, 81 FLA. B. J. 48, 52 (2007) (“With the increasing volume of family law cases and unrepresented litigants, more attention is being focused on the creation and implementation of alternative dispute resolution options that are less adversarial than the court process.”).

53. Moore, *supra* note 51, at 195.

54. *Id.* (quoting CAL. FAM. CODE § 3161(a)).

55. Bethany Zeps, *Interview: Child Custody Mediation*, 16 J. CONTEMP. LEGAL ISSUES 241, 241-42 (2007). In addition to lightening overcrowded dockets, mediation is also a less expensive alternative to trial. Comment, *Look Before You Leap: The Failed Promises of Child Custody Mediation*, 13 PROBATE L.J. 157, 157-58 (1996).

56. See *Arze v. Arze*, 2005 WL 1212609 (Tenn. App. 2005).

Legislatures have approached mandatory mediation with differing levels of enthusiasm. This article examines bills from three states: one of which proposes to institute mandatory mediation for custody disputes,<sup>57</sup> another of which proposes that parents involved in a custody dispute must create their own “custody implementation plan” before being required to proceed to mediation,<sup>58</sup> and the last of which proposes that the state should engage in a formal study of the benefits and detriments of using mediation in custody disputes.<sup>59</sup>

## 2. The Bills

### *a. New York Senate Bill 2913*<sup>60</sup>

In a bill introduced on February 15, 2007, the New York legislature proposed to institute mandatory mediation for parents involved in custody disputes.<sup>61</sup> New York Senate Bill 2913 creates the “Parent Mediation Program,” which requires parents with custody disputes to participate in a court sponsored mediation program.<sup>62</sup> After the parents have participated in the mediation, the mediator is responsible for submitting the results to the court, which then renders an appropriate custody order.<sup>63</sup>

The bill states that the mediator’s overriding concern must be “to integrate the child’s best interests within the family context.”<sup>64</sup> The mediator should also make efforts to ease the family transition, improve the family’s communication skills, and point out the family’s strengths.<sup>65</sup>

Addressing any inequities that may occur in custody disputes, the bill requires that the mediator make reasonable efforts to control potential power balances between the parties.<sup>66</sup> While it is difficult to discern exactly what inequities the legislature is attempting to curb, some critics of mandatory mediation have warned that it would lead to an increase in joint physical custody arrangements.<sup>67</sup> Mediators, the thinking goes, would find joint physical custody to be the easiest solution for the parties, and mothers would feel pressured to agree to the arrangement in fear of the consequences of being uncooperative.<sup>68</sup> An empirical study on the issue, however, reveals that mothers in mandatory mediation received sole physical custody more often than they did in litigation.<sup>69</sup>

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57. S. 2913, 230th Legis. Sess. (N.Y. 2007) (same as A.B. 3458, 230th Legis. Sess. (N.Y. 2007)), available at <http://assembly.state.ny.us/leg/?bn=S02913&sh=t> (last visited Oct. 17, 2007)).

58. S. 947 (Va. 2007).

59. H.C. Res. 3004, 60th Leg. Assem. (N.D. 2007), available at <http://www.legis.nd.gov/assembly/60-2007/bill-text/HGGE0100.pdf> (last visited Oct. 17, 2007).

60. See S. 2913, 230th Legis. Sess. (N.Y. 2007).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* The bill also states that in order to “encourage trust,” the mediator shall “maintain objectivity, provide and gather balanced information for both parties, and control bias.” *Id.*

67. See Suzanne Reynolds, Catherine T. Harris & Ralph A. Peeples, *Back to the Future: An Empirical Study of Child Custody Outcomes*, 85 N.C. L. REV. 1629 (2007).

68. *Id.* at 1629.

69. *Id.* at 1630.



Specifically, the mediator reviews the intake form and court file before proceeding with the mediation.<sup>70</sup> The mediator also must educate the parents on the types of disputed issues generally discussed in mediation, the range of possible outcomes from the mediation process, the mediator's role, and issues of confidentiality.<sup>71</sup> Following the mediation process, the mediator must submit to the court a written, comprehensive parenting agreement that summarizes the parents' plan for custody.<sup>72</sup>

### *b. Virginia Senate Bill 947*<sup>73</sup>

Virginia Senate Bill 947, introduced on January 10, 2007, amends and reenacts Section 20-124.2 of the Code of Virginia—a section that relates to court-ordered custody and visitation agreements.<sup>74</sup> Section B of 20-124.2, the section which is amended by S.B. 947, deals solely with custody arrangements.<sup>75</sup> It states that “[i]n determining custody, the court shall give primary consideration to the best interests of the child.”<sup>76</sup>

The amendment proposed by S.B. 947 states that prior to the issuance of a custody order, parents engaged in a custody dispute must submit a custody implementation plan.<sup>77</sup> Only if the custody implementation plans of the parents disagree will the court mandate mediation.<sup>78</sup> If the parties do not come to an agreement during or after mediation, the court will then determine an appropriate custody plan.<sup>79</sup>

Other states that use the concept of a custody implementation plan include Massachusetts<sup>80</sup> and Louisiana;<sup>81</sup> however, custody disputes in those states do not proceed to mediation if the parties fail to submit an appropriate plan. In Massachusetts, the parties, either jointly or separately, must submit a custody implementation plan at trial.<sup>82</sup> The court then must consider the plan submitted by the parties but is authorized to amend or reject the plan if it is deemed inappropriate.<sup>83</sup> In Louisiana, the parties submit their plan for custody at or before trial.<sup>84</sup> The court then must accept the agreement unless it is not in the best interests of the child.<sup>85</sup> In the absence of an agreed-upon plan, the court must award custody jointly unless custody in one parent is shown by clear and convincing evidence to serve the best interest of the child.<sup>86</sup>

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70. S. 2913, 230th Legis. Sess. (N.Y. 2007).

71. *Id.*

72. *Id.*

73. S. 947 (Va. 2007).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. MASS. GEN. LAWS ANN. ch. 208 § 31 (West 2003).

81. LA. CIV. CODE ANN. art. 132 (2006).

82. MASS. GEN. LAWS ANN. ch. 208 § 31 (West 2003).

83. *Id.*

84. LA. CIV. CODE ANN. art. 132 (1999).

85. *Id.*

86. *Id.*

*c. North Dakota House Concurrent Resolution 3004*<sup>87</sup>

Instead of implementing or abandoning the use of alternative dispute resolution in custody disputes, the North Dakota legislature proposes that the state engage in a formal study of the issue.<sup>88</sup> House Concurrent Resolution 3004, which was introduced on January 4, 2007, directs the North Dakota Legislative Council to study the issue of child custody and to determine whether “the state should pursue nonadversarial alternatives for the resolution of family law disputes.”<sup>89</sup>

In its reasoning for the bill, the proponents point out that the vast majority of the caseload of the North Dakota courts is tied up in family law issues.<sup>90</sup> The bill also indicates that custody arrangements are often established in an adversarial setting which could damage future relationships, and traditional custody enforcement actions “promote an adversarial climate,” which can hinder their effectiveness.<sup>91</sup> Furthermore, the proponents of the bill acknowledge that there may be “inequities” in the enforcement of child support orders as they relate to obligors.<sup>92</sup>

## 2. Conclusion

State legislatures have been implementing mediation into child custody law for years, but as these three bills display, there is still no uniform approach to the subject.<sup>93</sup> New York has wholeheartedly endorsed mandatory mediation; Virginia has implemented mandatory mediation as a second option—while making negotiation between parents a priority; and North Dakota has expressed a desire to research the issue before enacting further laws. These bills provide a glimpse of the burgeoning development of legislation related to the use of mediation in child custody disputes.

### *D. Used Vehicle Buyer Protection Act: Illinois House Bill 501*

Bill Number:	Illinois House Bill 501
Summary:	This bill would create the Used Vehicle Buyer Protection Act. It requires used vehicle dealers to stipulate mechanical or technical defects or problem histories with particular makes and models. The act further requires a written warranty and mandates the creation of an arbitration mechanism to resolve disputes arising from warranty disagreements.
Status:	Re-referred to Rules Committee

87. H.C. Res. 3004, 60th Leg. Assem. (N.D. 2007).

88. *Id.*

89. *Id.* (In addition to custody issues, the bill also pertains to visitation and child support.).

90. *Id.*

91. *Id.* Commentator Jeff Atkinson says that mediation resolutions, on the other hand, are often very effective. *Modern Child Custody Practice* § 2.03, at 50 (1986). In one mandatory mediation program “fewer than 10% of mediated cases were officially reopened within the first year after mediation.” *Id.*

92. *Id.* As in the New York bill, the text of the bill does not mention what inequities it is specifically addressing.

93. *Zeps, supra* note 55, at 241-42.

## 1. Introduction

The stated purpose of this bill was to create civil penalties for used vehicle dealers who fail to honor written warranties.<sup>94</sup> Illinois House Bill 501 further provides for the creation of an informal arbitration mechanism to be set up by the Illinois Attorney General.<sup>95</sup> This mechanism provides an alternative for consumers who wish to avoid arbitration required in the contract with the vehicle dealer.<sup>96</sup>

House Bill 501 was filed by Jim Sacia and first read on February 1, 2007.<sup>97</sup> The bill was immediately referred to the House Rules Committee who, on February 7, 2007, assigned it to the House Consumer Protection Committee.<sup>98</sup> The House Consumer Protection Committee, however, sent it back to the House Rules Committee on March 23, 2007.<sup>99</sup> A needle in a haystack of 2,979 other bills assigned to the House Rules Committee, House Bill 501 never left the committee.<sup>100</sup>

## 2. The Bill

The Federal Trade Commission ("FTC") provides weak regulation of the used motor vehicle trade.<sup>101</sup> The FTC does not require dealers to issue warranties and does not provide consumers with any remedy or process to resolve warranty disputes.<sup>102</sup> "As is" sales are permitted, a state prohibition notwithstanding.<sup>103</sup> House Bill 501 seeks to erect this exact prohibition.

House Bill 501 creates in Illinois a "Used Car Lemon Law Bill of Rights."<sup>104</sup> This law mandates that all used vehicle purchases of greater than \$1,500 and leases with an agreed value of greater than \$1,500 must be accompanied by a written warranty.<sup>105</sup> The tiered warranties decline with the mileage of the vehicle.<sup>106</sup> The bill requires the dealer warranty to cover repair of the "engine, transmission, drive axle, brakes, radiator, steering, alternator, generator, starter, or ignition system (excluding the battery) . . . ."<sup>107</sup> The warranty is further required to provide that

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94. H.R. 501, 95th Gen. Assem. (Ill. 2007), Bill History, available at <http://www.ilga.gov/legislation/billstatus.asp?DocNum=0501&GAID=9&GA=95&DocTypeID=HB&LegID=27508&SessionID=51> (last visited Nov. 23, 2007).

95. H.R. 501, 95th Gen. Assem. (Ill. 2007), available at <http://www.ilga.gov/legislation/95/HB/PDF/09500HB0501lv.pdf> (last visited Nov. 23, 2007).

96. *Id.*

97. H.R. 501, 95th Gen. Assem. (Ill. 2007), Bill History.

98. *Id.*

99. *Id.*

100. Bills Assigned to Rules Committee, available at <http://www.ilga.gov/house/committees/combills.asp?CommitteeID=374&GA=95> (last visited Nov. 23, 2007); H.R. 501, 95th Gen. Assem. (Ill. 2007), Bill History.

101. 16 C.F.R. § 455.1 (2007).

102. 16 C.F.R. § 455.2.

103. 16 C.F.R. § 455.6.

104. H.R. 501, 95th Gen. Assem. (Ill. 2007).

105. *Id.*

106. *Id.* Used vehicles purchased with less than 36,001 miles are warranted for 90 days or 4,000 miles—whichever comes first. Used vehicles purchased with more than 36,000 miles but fewer than 80,000 miles are warranted for 60 days or 3,000 miles—whichever comes first. Used cars purchased with between 80,000 and 100,000 miles are warranted for 30 days or 1,000 miles—whichever comes first. Warranties are not required for used cars purchased with more than 100,000 miles.

107. *Id.*

after three or more attempts to repair the same problem or upon the car being out of service for fifteen or more days, the purchaser is “entitled to return the car and receive a refund of [the] purchase price or of all payments made under [the] lease contract . . . .”<sup>108</sup>

The bill drafter anticipated the high volume of relatively minor disputes that would arise from the new legislation. As a result, the drafter provided for an informal arbitration mechanism to swiftly adjudicate warranty disputes.<sup>109</sup> The specific process and rules of the arbitration are left to the Illinois Attorney General.<sup>110</sup> Upon a finding by the arbitrator, the dealer is given thirty days to comply with the decision and, upon failing to do so, is subject to a civil penalty of \$25 per day for non-compliance, up to \$500.<sup>111</sup>

### 3. National Trend

Illinois is not the first state to explore lemon laws for the used vehicle market. In 1984, New York became the first state to enact a lemon law for used car purchases.<sup>112</sup> New York’s used car lemon law is almost identical to Illinois House Bill 501 in all substantive respects.<sup>113</sup> Following New York’s lead, Rhode Island passed a similar used car lemon law in 1985 but omitted the creation of the state-sponsored arbitration mechanism.<sup>114</sup> In 1987, Massachusetts passed its used car lemon law mandating that all dealers “submit to state-certified, used car arbitration, if such arbitration is requested by the consumer, asserting his or her right to a repurchase . . . .”<sup>115</sup> No mention of arbitration was made in lemon laws in Minnesota, Connecticut, Hawaii, or New Jersey.<sup>116</sup>

### 4. Conclusion

This bill seeks to add Illinois to the short list of states that implement arbitration into lemon law legislation. It has been over twenty years since this bill was enacted in New York, and it has proved to be a very efficient and accessible system.<sup>117</sup> For any state choosing to require tiered warranties for used car sales, the arbitration mechanism advocated by Illinois House Bill 501—and the one imple-

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. See generally Note, *New York’s Used Car Lemon Law: An Evaluation*, 35 BUFF. L. REV. 971 (1986).

113. N.Y. GEN. BUS. LAW § 198-b (McKinney 2004).

114. 1985 R.I. Pub. Laws 5011 (codified at R.I. GEN. LAWS § 31-5.4 (2006)); R.I. GEN. LAWS § 31-5.4-5(a) (2006) (requiring only that “[i]f a dealer has established or participates in an informal dispute settlement procedure which complies in all respects with the provisions of 16 CFR Part 703 the provisions of this chapter concerning refunds or replacement shall not apply to any consumer who has not first resorted to that procedure.”).

115. MASS. GEN. LAWS ANN. ch. 90 § 7N 1/4 (3)(A)(iii) (West 2006).

116. MINN. STAT. ANN. § 325F.662 (West 2006); CONN. GEN. STAT. ANN. §§ 42-220 to 42-226 (West 2006); HAW. REV. STAT. ANN. § 481J (LexisNexis 2006); N.J. STAT. ANN. §§ 56:8-69 to 56:8-76 (West 2006).

117. Using the New York State Arbitration Program, <http://www.oag.state.ny.us/consumer/cars/newarb.html> (last visited Nov. 26, 2007).

mented by New York—would make adjudication more streamlined than the traditional court alternative. Because people today are so dependent on their vehicles, when the operation of said vehicles are impaired, all efforts should be made to expedite any resolution.

*E. Binding Arbitration for Personal Injury Protection Insurance Policies:  
Washington House Bill 1492*

Bill Number:	Washington House Bill 1492
Summary:	This bill would require all personal injury protection (PIP) insurance policies to contain binding arbitration provisions allowing either the insurer or the insured to request arbitration.
Status:	In House Rules Committee as of April 22, 2007.

*I. Introduction*

Most Washington comprehensive automobile insurance policies contain PIP coverage, which provides no-fault benefits if the policyholder is injured in an automobile accident.<sup>118</sup> These benefits include limited coverage for injury, death, disability, wage loss, and other expenses resulting from the accident.<sup>119</sup> Insurers are required to provide PIP coverage unless an insured expressly rejects it in writing.<sup>120</sup>

House Bill 1492 was introduced to the Washington House of Representatives by the House Committee on Insurance, Financial Services, and Consumer Protection on January 22, 2007.<sup>121</sup> After holding a public hearing, the Committee passed a substitute bill on February 27, 2007.<sup>122</sup> On March 10, the House passed the substitute bill, and it was sent to the Senate Committee on Financial Institutions and Insurance on March 13.<sup>123</sup> After holding a public hearing on the bill, the Senate Committee returned it to the House Rules Committee.<sup>124</sup>

*2. The Bill*

House Bill 1492 proposes to amend RCW 48.22.085 to allow an arbitrator to decide PIP disputes between insurers and insureds.<sup>125</sup> The amendment requires all

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118. H.R. Rep. 1492, 60th Legis., Reg. Sess. (Wash. 2007).

119. *Id.*

120. S. Rep. 1492, 60th Legis., Reg. Sess. (Wash. 2007). Mandatory minimum benefits include “up to \$10,000 for medical and hospital expenses incurred within three days of the date of the insured’s injury; up to \$2,000 for funeral expenses; up to \$5,000 for loss of services, subject to a limitation of \$40 per day and \$200 per week; and \$10,000 in loss of income. Insurers must offer increased benefits, which may include a maximum of \$35,000 for medical expenses and \$35,000 for loss of income, if specifically requested by the insured.” *Id.*

121. H.R. 1492, 60th Legis., 2007 Reg. Sess. (Wash. 2007), Status, available at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1492> (last visited Oct. 28, 2007).

122. *Id.*

123. *Id.*

124. *Id.*

125. H.R. 1492, 60th Legis., Reg. Sess. (Wash. 2007).

automobile liability insurance policies containing PIP coverage to contain binding arbitration clauses.<sup>126</sup> Binding arbitration would be used to resolve disputes over the amount of medical and hospital expenses, funeral expenses, income continuation, and loss of services sustained by an insured because of bodily injury caused by an automobile accident.<sup>127</sup> Either the insured or the insurer may request arbitration in writing when a dispute over PIP coverage arises, and the parties must choose an arbitrator within thirty days of the written request for arbitration.<sup>128</sup> The insurer is obligated to pay all arbitrators.<sup>129</sup> If the insured receives additional benefits at arbitration, the insurer also must pay actual arbitration costs incurred as a result of proving the insured's claim to additional benefits.<sup>130</sup>

### 3. Support and Opposition

Promoters of House Bill 1492 seek to address the problem of applying the PIP policy when an insured needs the coverage quickly. Insureds often cannot access health insurance until their PIP coverage is exhausted.<sup>131</sup> This means insureds can be trapped trying to pay their own medical expenses until a court determines the status of the PIP coverage.<sup>132</sup> If a court denies PIP coverage, the health insurer will step in.<sup>133</sup> Either way, the insured must wait until the lengthy litigation process is over before receiving a financial benefit.<sup>134</sup> The bill seeks to deter insurers from unreasonably denying PIP coverage.<sup>135</sup> Finally, the insurers will suffer no financial ill effects because the costs of arbitration can be passed on to consumers.<sup>136</sup> This increase in premiums will be negligible to consumers because arbitration is so inexpensive.<sup>137</sup>

The insurance industry opposes the bill because such a small number of PIP disputes arise.<sup>138</sup> It believes binding arbitration will actually produce more litigation and increased delays because it will remove the incentive for both parties to amicably resolve the dispute.<sup>139</sup> It also complains that the bill's cost structure is not reciprocal because the insurer must pay whether it wins or loses the arbitration proceeding.<sup>140</sup> In addition, the opposition argues that many PIP policies already contain voluntary arbitration clauses, which allow for a de novo trial if either party is dissatisfied with the arbitration outcome.<sup>141</sup> Binding arbitration eliminates this

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126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* These costs include expert witness fees.

131. H.R. Rep., Reg. Sess. (Wash. 2007).

132. *Id.*

133. *Id.*

134. *Id.*

135. S. Rep., Reg. Sess. (Wash 2007).

136. *Id.*

137. *Id.*

138. H.R. Rep., Reg. Sess. (Wash. 2007).

139. *Id.*

140. *Id.*

141. S. Rep., Reg. Sess. (Wash. 2007).

right to a trial. Finally, it believes binding arbitration will not result in expedited recovery, and the process will be too confusing to consumers.<sup>142</sup>

#### 4. Conclusion

Washington House Bill 1492 attempts provide recourse to insureds who have been injured in an automobile accident. Because the state already mandates personal injury protection coverage on all automobile liability policies to ensure no-fault protection, it seems appropriate to guarantee a quick and fair method of settling coverage disputes. Without expeditious determination of disputes, the statute requiring PIP coverage is frustrated because it does not serve its purpose of protecting consumers after automobile accidents.

#### F. Required Mediation of Tort Disputes in Mississippi

Bill Number:	Mississippi House Bill 158
Summary:	This bill would require all tort disputes to be submitted for mediation as a prerequisite to the filing of a civil suit.
Status:	Died in House Judiciary A Committee

#### 1. Introduction

The effect of this bill is to redirect all tort cases to a state-sponsored mediation process in an attempt to resolve the dispute before the civil action is filed.<sup>143</sup> Upon introduction, the bill was referred to the Judiciary A Committee on January 2, 2007, where it died before the month's end.<sup>144</sup> This is at least the fourth year in a row that Rep. Jessica Upshaw, an attorney practicing in the areas of torts and mediation, has filed this bill.<sup>145</sup>

#### 2. The Bill

This bill would make it mandatory for all tort-related civil suits to be submitted for mediation.<sup>146</sup> The bill prohibits the filing of a covered civil action within ninety days of the termination of mediation, unless the defendant issues the claimant a written notice of denial.<sup>147</sup> The bill requires mediators to be members of The Mississippi Bar and to "have been engaged in the active practice of law for a minimum of five (5) years," but the bill makes no reference as to a selection

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142. *Id.*

143. H.R. 158, Reg. Sess. (Miss. 2007), available at <http://billstatus.ls.state.ms.us/documents/2007/html/HB/0100-0199/HB0158IN.htm> (last visited Nov. 23, 2007).

144. H.R. 158, Reg. Sess. (Miss. 2007), History of Actions/Background, available at <http://billstatus.ls.state.ms.us/2007/HTML/history/HB/HB0158.htm> (last visited Nov. 23, 2007).

145. H.R. 1204, Reg. Sess. (Miss. 2004); H.B. 112, Reg. Sess. (Miss. 2005); H.B. 931, Reg. Sess. (Miss. 2006); Jessica Silbey Upshaw and Associates, Welcome page, <http://www.jessicaupshaw.com> (last visited November 23, 2007).

146. H.R. 158, Reg. Sess. (Miss. 2007).

147. *Id.*

process.<sup>148</sup> The only guidance offered to mediators is to “make every effort to help the parties resolve their dispute in order to avoid litigation.”<sup>149</sup> By default, the mediation is non-binding but parties can choose to make the mediation binding.<sup>150</sup> As a corollary to a petition, the notice of claim requires “a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought and the residence of the person making the claim at the time of the injury and at the time of filing the notice.”<sup>151</sup>

The act specifically preserves all powers of the courts over awards and does not invalidate “any award good at common law.”<sup>152</sup>

### 3. Support and Opposition

Judging from the long track record of its swift dismissals, it seems that the current Mississippi House Judiciary Committee has no interest in even contemplating the mediation regime advocated by H.B. 158.<sup>153</sup> One possible reason that the committee refuses to consider the bill is that the author has still made no provisions for the problem of discovery.<sup>154</sup> No attempt is made to try to reconcile the bill with Mississippi Rule of Civil Procedure Rule 26, which outlines discovery in civil actions.<sup>155</sup> The Bill only states that the “[m]ediation shall be informal and rules of Civil Procedure and Evidence shall be relaxed.”<sup>156</sup> The value of mediation, however, should not be forgotten.

By now, many people accept mediation as an expected step in the life of a dispute.<sup>157</sup> As litigation costs continue to rise and animosity among parties heightens, mediation continues to offer a less expensive and possibly more amicable process for adjudication.<sup>158</sup>

### 4. Conclusion

House Bill 158 requires parties to at least attempt to mediate their disputes before proceeding to trial. There are important discovery concerns that would require attention before this bill could be seriously considered. Potentially more concerning, however, is the fact that the bill seems to create an atmosphere ripe for abuse by defendants by prohibiting the filing of a civil action for ninety days unless the defendant issues the claimant a written notice of denial prior to the

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148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. H.R. 1204, Reg. Sess. (Miss. 2004); H.B. 112, Reg. Sess. (Miss. 2005); H.R. 931, Reg. Sess. (Miss. 2006); H.R. 158, Reg. Sess. (Miss. 2007).

154. *Id.*

155. Miss. R. Civ. P. 26.

156. H.R. 158, Reg. Sess. (Miss. 2007).

157. Richard T. Payne, *All Things ADS Considered*, 50 RES GESTAE 29, 29 (2006).

158. See generally Larry C. Hunter, *Mediation-Behind Closed Doors*, 49 ADVOCATE 24 (2006).



passing of ninety days.<sup>159</sup> This requirement allows defendants to draw out the mediation process for a long period of time in hopes of compelling plaintiffs to accept smaller settlements. Mediation certainly has a place in our justice process, but arguably not the place advocated by House Bill 158.

*G. Pretrial Victim-Offender Mediation Programs: Texas House Bill 2437<sup>160</sup>*

Bill Number:	Texas House Bill 2437
Summary:	This bill would authorize counties or municipalities to establish, operate, and fund a pretrial victim-offender mediation program for cases involving first-time offenders.
Status:	Committee report sent to Calendars on May 3, 2007

*1. Introduction*

Texas House Bill 2437 provides for the “establishment, operation, and funding of pretrial victim-offender mediation programs.”<sup>161</sup> The bill follows a trend in the United States of instituting pretrial victim mediation programs. At least thirteen states currently have statutes specifically creating victim mediation programs or mentioning the use of such programs.<sup>162</sup> Many of these programs are used in juvenile related crimes. House Bill 2437 is not the first time Texas has entered the realm of victim-offender mediation, as Texas currently has a statute authorizing a study of victim-offender mediation programs for juvenile offenders.<sup>163</sup> The Texas Code of Criminal Procedure also currently gives the Texas courts discretion to “assist the victim and the defendant in participating in a victim-offender mediation program” at the request of the victim.<sup>164</sup>

While the Texas Code of Criminal Procedure currently allows victim-offender mediation in certain circumstances, the prosecutors and judges have a great deal of discretion in the administration of the process.<sup>165</sup> The current system also lacks provisions allowing victims to provide official input in the proceed-

159. H.R. 158, Reg. Sess. (Miss. 2007).

160. H.R. 2437, 80<sup>th</sup> Legis. 2007 Reg. Sess. (Tex 2007), available at <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=HB2437> (last visited Nov. 23, 2007).

161. *Id.*

162. States with statutes establishing victim-offender mediation programs include: Alabama (ALA. CODE 1975 § 12-25-32 (2005)), Colorado (COLO. REV. STAT. ANN. § 19-2-309.5 (West 2004)), Delaware (DEL. CODE ANN. tit. 11, § 9501 (2001)), Minnesota (MINN. STAT. ANN. § 611A.77 (West 2003)), Missouri (MO. REV. STAT. § 217.777 (2006)), Montana (MONT. CODE ANN. § 41-5-1304 (2007)), Nebraska (NEB. REV. STAT. § 43-286 (2004)), North Carolina (N.C. GEN. STAT. ANN. § 7B-1706 (West 2003)), Ohio (OHIO REV. CODE ANN. § 307.62 (2003)), Oregon (OR. REV. STAT. ANN. § 135.951 (West 2001)), Tennessee (TENN. CODE ANN. § 16-20-101 (1994)), Washington (WASH. REV. CODE ANN. § 13.40.070 (West 2004)), and Wisconsin (WIS. STAT. ANN. § 938.34 (West 2006)).

163. TEX. HUM. RES. CODE ANN. § 141.055 (Vernon 2007).

164. TEX. CODE CRIM. PROC. ANN. art. 26.13 (Vernon 1989).

165. C.S.H.B. 2437, 80<sup>th</sup> Legis. 2007 Reg. Sess. (Tex 2007) Bill Analysis, available at <http://www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=80R&Bill=HB2437> (last visited Nov. 26, 2007).

ings.<sup>166</sup> The purpose of House Bill 2437 is to “establish a pre-trial victim-offender mediation program” and to “allow victims of certain misdemeanors and state jail felonies to take an active role in the rehabilitation of a defendant who wishes to take responsibility for his or her actions.”<sup>167</sup>

The bill was filed on March 5, 2007, by Representative Juan Escobar and referred to the House Committee on Criminal Jurisprudence.<sup>168</sup> The bill was reported favorably by the Criminal Jurisprudence committee without amendment on April 10, 2007.<sup>169</sup> However, after a public hearing, the bill was later reconsidered by the committee.<sup>170</sup> The bill was reported favorably on April 17, 2007 with a vote of five ayes, zero nays, zero present not voting, and four absent.<sup>171</sup> The last action taken on the bill was the committee report being sent to Calendars on May 3, 2007.<sup>172</sup>

## 2. The Bill

House Bill 2437 gives authority to municipalities and county courts to establish a victim-offender mediation program for offenders who have been arrested or charged with a misdemeanor or state jail felony under Title Seven of the Texas Penal Code.<sup>173</sup> The offender must not have been previously convicted of a misdemeanor or felony, with the exception of traffic misdemeanors punishable only by fine.<sup>174</sup> Title Seven of the Texas Penal Code covers offenses against property—including arson, robbery, burglary, theft, money laundering, and insurance and Medicaid fraud.<sup>175</sup> House Bill 2437 requires the state attorney to identify offenders eligible to participate in the program and obtain consent from the victim and offender before proceeding with the victim-offender mediation.<sup>176</sup>

Before taking part in the program, the offender must enter into a binding mediation agreement in which the offender apologizes and agrees either to pay restitution to the victim or perform community service.<sup>177</sup> Any statements made in the mediation are considered confidential and cannot be introduced into evidence, unless a question concerning the meaning of the mediation agreement is

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166. H.R. 2437, 80th Legis. 2007 Reg. Sess. (Tex. 2007) Bill History, *available at* <http://www.legis.state.tx.us/tlodocs/80R/analysis/html/HB02437H.htm> (last visited Nov. 26, 2007).

167. *Id.*

168. H.R. 2437, 80th Legis. 2007 Reg. Sess. (Tex. 2007) Bill History, *available at* <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=HB2437> (last visited Nov. 26, 2007).

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. H.R. 2437, 80th Legis. 2007 Reg. Sess. (Tex. 2007).

174. *Id.*

175. Texas Statutes Penal Code, *available at* <http://tlo2.tlc.state.tx.us/statutes/pe.toc.htm> (last visited November 26, 2007). The complete list of offenses includes: arson, criminal mischief, and other property damage or destruction (Chapter 28), robbery (Chapter 29), burglary and criminal trespass (Chapter 30), theft (Chapter 31), fraud (Chapter 32), computer crimes (Chapter 33), telecommunications crimes (Chapter 33A), money laundering (Chapter 34), insurance fraud (Chapter 35), and Medicaid Fraud (Chapter 35A).

176. H.R. 2437, 80th Legis. Reg. Sess. (Tex. 2007).

177. *Id.*

posed.<sup>178</sup> Under the bill, if an offender enters a pretrial mediation, the court (with consent from the attorney representing the state) may defer proceedings without a plea of guilty or nolo contendere.<sup>179</sup> The case proceeds through the regular criminal justice system if the pretrial mediation fails to reach an agreement or if the offender fails to fulfill the terms of the agreement.<sup>180</sup> If the offender successfully completes the mediation agreement and either pays all court costs or enters a court approved payment plan, the bill requires the court to “dismiss the indictment or information charging the [offender] with the commission of the offense.”<sup>181</sup> The court makes the final determination whether the mediation agreement has been completed, and its determination may not be appealed.<sup>182</sup>

The program is allowed to collect a reasonable fee not to exceed \$500.<sup>183</sup> The program is also able to collect fees to cover any expenses associated with alcohol and controlled substance testing, counseling, or treatment included in the mediation agreement as long as the fee is based on the offender’s ability to pay and used specifically for purposes associated with the program.<sup>184</sup>

### 3. Support and Opposition

The bill faced very little opposition throughout the committee process. There were no witnesses who testified or registered to testify against the bill during its public hearing.<sup>185</sup> There were also no votes against the committee substitute in the Criminal Jurisprudence committee.<sup>186</sup> This does not mean there are no potential issues with the bill. One drawback is that while the purported purpose is to establish a pretrial victim-offender mediation plan, the bill leaves the adoption of the program to the county commissioners and the governing bodies of municipalities.<sup>187</sup> This discretion could lead to a suboptimal implementation of the bills purpose.

Still, supporters of the bill argue that the creation of victim-offender mediation programs for property-related crimes will be beneficial for Texas. The Texas Public Policy Foundation Center for Effective Justice supported the bill and its director Marc Levin testified in favor of the bill.<sup>188</sup> Levin testified that surveys have shown that victim-offender mediation improves the outcomes for victims and reduces recidivism for offenders.<sup>189</sup> Levin also stated that victim-offender mediation is cost effective due to the lack of court fees and the fact that bill provisions

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178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. H.R. 2437, 80th Legis. 2007 Reg. Sess. (Tex. 2007), Witness List, available at <http://www.legis.state.tx.us/tlodocs/80R/witlistbill/html/HB02437H.htm> (last visited Nov. 26, 2007).

186. H.R. 2437, 80th Legis. 2007 Reg. Sess. (Tex. 2007), Bill History.

187. H.R. 2437, 80th Legis. 2007 Reg. Sess. (Tex. 2007).

188. Testimony on H.B. 2437 Relating to Victim-Offender Mediation, available at <http://www.texaspolicy.com/pdf/2007-03-27-ML-testimony.pdf> (last visited Nov. 26, 2007).

189. *Id.*

provide that the cost of the mediation is to be covered by a general offender fee and offender participant fee.<sup>190</sup>

#### 4. Conclusion

The Texas House of Representatives has yet to take any further action concerning House Bill 2437. If enacted, the bill will greatly enhance the victim-offender mediation programs utilized in Texas. The bill will expand the program outside its currently limited use—cases involving violent crimes. The implementation of expanded victim-offender mediation would ideally lead to mutually agreeable outcomes for both victims and offenders. This is the desired goal of mediation, and it is made unlikely under the current Texas victim-offender mediation programs.

## II. HIGHLIGHTS

### A. Alabama House Bill No. 563<sup>191</sup>

House Bill 563 was introduced by Representative Roderick “Rod” Hampton Scott on March 29, 2007.<sup>192</sup> It was sent to the House Commerce Committee where it remains pending committee action.<sup>193</sup> The bill amends Section 25-7-34 of the Alabama Code which prohibits employers from requiring employees to pay any dues or fees to labor unions or organizations.<sup>194</sup> Under the current statute, labor organizations are unable to recover the cost of representing nonmembers in grievance and arbitration proceedings even though nonmembers benefit from the representation provided by labor organization under collective bargaining agreements.<sup>195</sup> The bill allows labor organizations to charge nonmember employees the actual expenses incurred by the labor organization while representing members and nonmembers in collective bargaining grievances or arbitration.<sup>196</sup> However, nothing in the bill requires nonmembers to become members of a labor organization, and the statute still prohibits employers from requiring employees from paying dues or fees to labor organizations.<sup>197</sup>

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190. *Id.*

191. H.R. 563, 2007 Leg., Reg. Sess. (Ala. 2007).

192. H.R. 563, 2007 Leg., Reg. Sess. (Ala. 2007), Bill Summary, available at <http://alisdb.legislature.state.al.us/acas/ACASLogin.asp?SESSION=1036> (last visited Nov. 27, 2007).

193. *Id.*

194. ALA. CODE § 25-7-34 (2000).

195. H.R. 563, 2007 Leg., Reg. Sess. (Ala. 2007), available at <http://alisdb.legislature.state.al.us/acas/ACTIONViewFrame.asp?TYPE=Instrument&INST=HB563&DOCPATH=searchableinstruments/2007RS/Printfiles/&PHYDOCPATH=//alisdb/acas/searchableinstruments/2007RS/PrintFiles/&DOCNAMES=HB563-int.pdf> (last visited Nov. 26, 2007).

196. *Id.*

197. *Id.*

*B. Georgia Senate Bill No. 201*<sup>198</sup>

Georgia Senate Bill 201 amends Title 19 of the Official Code of Georgia Annotated<sup>199</sup> to create the Georgia Family Law Arbitration Act.<sup>200</sup> The Georgia Family Arbitration Act creates an arbitration system to handle issues involving marital separation or divorce, along with issues of child custody and child support between unmarried parents.<sup>201</sup> It establishes the exclusive means for handling arbitration claims involving alimony, child custody and child support.<sup>202</sup> Married parties are allowed to agree to arbitrate marital controversies, except for divorce.<sup>203</sup> Courts are granted the authority to order the parties to arbitration if an arbitration agreement has been entered into by the parties.<sup>204</sup> Courts also have the authority to appoint an arbitrator if the parties fail to agree on a method for appointment.<sup>205</sup> Arbitrators are granted a great deal of discretion to conduct the arbitration as they see fit, as long as the arbitration is conducted in a fair and expeditious manner.<sup>206</sup> The bill also allows an arbitrator's alimony, child support, or child custody order to be modified if circumstances change.<sup>207</sup> House Bill 201 was introduced on February 22, 2007 by Senators Seth Harp and Judson Hill.<sup>208</sup> It was then referred to the Senate Committee on Judiciary where it remains.<sup>209</sup>

*C. Illinois House Bill 1719*<sup>210</sup>

This bill was introduced into the Illinois House on February 22, 2007, as an amendment to the Sheriff's Merit System Law.<sup>211</sup> The bill specifically amended statutes pertaining to the disciplinary procedures taken against sheriff's office employees.<sup>212</sup> The bill institutes impartial arbitration to resolve disciplinary disputes for Sheriff's office employees in offices with collective bargaining agreements.<sup>213</sup> The arbitration process will serve as a supplement to due process in disciplinary proceedings.<sup>214</sup> The bill, sponsored by Representatives Charles Jef-

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198. S. 201, 149th Gen. Assem., Reg. Sess. (Ga. 2007).

199. Title 19 covers a variety of domestic relations topics including marriage, divorce, alimony and child support, and child abuse. Title 19 GA. CODE ANN. (West 2007).

200. S. 201, 149th Gen. Assem., Reg. Sess. (Ga. 2007).

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.* The bill allows modification pursuant to Chapter 6 and 9 of Title 19. *Id.* Chapter 6 pertains to alimony and child support and Chapter 9 pertains to child custody proceedings. GA. CODE ANN §19-6, §19-9 (West 2007).

208. S. 201, 149th Gen. Assem., Reg. Sess. (Ga. 2007), Bill History, available at [http://www.legis.ga.gov/legis/2007\\_08/sum/sb201.htm](http://www.legis.ga.gov/legis/2007_08/sum/sb201.htm) (last visited Nov. 15, 2007).

209. *Id.*

210. H.R. 1719, 95th Leg., Reg. Sess. (Ill. 2007).

211. H.R. 1719, 95th Leg., Reg. Sess. (Ill. 2007), Bill History, available at [http://www.ilga.gov/legislation/BillStatus\\_pf.asp?DocNum=1719&DocTypeID=HB&LegID=30544&GAID=9&SessionID=51&GA=95](http://www.ilga.gov/legislation/BillStatus_pf.asp?DocNum=1719&DocTypeID=HB&LegID=30544&GAID=9&SessionID=51&GA=95) (last visited Nov. 23, 2007).

212. H.R. 1719, 95th Leg., Reg. Sess. (Ill. 2007).

213. *Id.*

214. *Id.*

erson and Greg Harris and Senator Don Harmon, was signed by the governor on August 13, 2007 and becomes effective January 1, 2008.<sup>215</sup>

#### *D. Maine House Paper 508*<sup>216</sup>

This bill, introduced into the Maine House of Representatives on February 8, 2007, imposes a pre-trial mediation requirement for landlord-tenant disputes involving eviction.<sup>217</sup> Any agreement made during mediation must be put in writing and submitted for the court's approval.<sup>218</sup> The parties are required to make good faith efforts to mediate before the court will proceed with the hearing.<sup>219</sup> Parties failing to do so may be subject to a default judgment, have their action dismissed, or be assessed court costs and attorney's fees.<sup>220</sup> The court may waive mediation if all disputes are over matters of law rather than of fact.<sup>221</sup> The bill, sponsored by Representative Richard Wagner, was signed into public law on June 7, 2007.<sup>222</sup>

#### *E. Montana House Bill 629*<sup>223</sup>

House Bill 629, introduced on February 9, 2007, implements mediation into criminal proceedings in Montana.<sup>224</sup> The bill allows the court, at the request of a party or at the suggestion of the court, to refer the proceeding to a mediator—provided that all parties to the case give consent.<sup>225</sup> The proceeding may not be referred to a mediator if it involves violent crimes such as deliberate homicide, aggravated kidnapping, and sexual abuse of children.<sup>226</sup> Any aspect of the proceeding may be the subject of the mediation,<sup>227</sup> and after agreeing to mediate, either party may withdraw without penalty.<sup>228</sup> In deciding whether mediation is appropriate for the case, the court may consider a list of factors including: (1) the nature of the offense; (2) any special circumstances or characteristics of the defendant or any victim, (3) whether the defendant previously participated in mediation in the current or a prior proceeding; [and] (4) whether it is probable that the defendant will cooperate with the mediator.<sup>229</sup> If the mediation is successful, the

215. H.R. 1719, 95th Leg., Reg. Sess. (Ill. 2007), Bill History.

216. H.P. 508, 123rd Leg., Reg. Sess. (Me. 2007).

217. H.P. 508, 123rd Leg., Reg. Sess. (Me. 2007), Bill History, available at <http://janus.state.me.us/legis/LawMakerWeb/externalsiteframe.asp?ID=280023181&LD=659&Type=1&SessionID=7> (last visited Nov. 23, 2007).

218. H.P. 508, 123rd Leg., Reg. Sess. (Me. 2007).

219. *Id.*

220. *Id.*

221. *Id.*

222. H.P. 508, 123rd Leg., Reg. Sess. (Me. 2007), Bill History.

223. H.R. 629, 60th Leg., Reg. Sess. (Mont. 2007).

224. *Id.*

225. *Id.* The mediator is chosen by the court. *Id.*

226. *Id.* Other crimes that may not proceed to mediation under House Bill 629 include mitigated deliberate homicide, intimidation, partner or family member assault, assault on a minor, stalking, sex crimes, and ritual abuse of a minor. *Id.*

227. *Id.* Issues that could be the subject of the mediation include the charge, a plea bargain, or a recommended sentence.

228. *Id.*

229. *Id.* Other factors listed in the bill include:

mediator must inform the court of any agreement, and said agreement is subject to the approval of the court.<sup>230</sup> "If [the] mediation is unsuccessful or if one of the parties withdraws from the mediation . . . the prosecutor may proceed with the prosecution of the defendant."<sup>231</sup> On April 17, 2007, House Bill 629 was signed by the Governor of Montana and implemented into Montana criminal procedure.<sup>232</sup>

### *F. New York Assembly Bill 835<sup>233</sup>*

Assembly Bill 835 proposes to establish an ombudsman position in New York public schools.<sup>234</sup> The Office of Ombudsman, if the bills were enacted, would investigate and report complaints of poor environmental, health and safety conditions in the school system.<sup>235</sup> The ombudsman's responsibilities would include informing the public concerning the requirements that schools must meet in terms of health and safety, and informing the public regarding how to file a complaint when poor conditions are suspected.<sup>236</sup>

According to the bill, once the Office of Ombudsman receives a complaint, it must commence an investigation within seven days.<sup>237</sup> Not more than thirty days after beginning the investigation, the ombudsman must send a preliminary written report to the complainant, and once the investigation is completed, the ombudsman must send a final report to the complainant, the school district, any local agency with jurisdiction over the matter, and to the appropriate district attorney or attorney general if there are allegations of criminal violations.<sup>238</sup> Finally, the ombudsman must submit to the governor and other officials an annual report which includes the number and types of complaints received in the previous year, the

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the recommendation of any victim or victims; the recommendation of any involved law enforcement agency; whether a qualified mediator is available; the type of sentence, including any treatment, that the defendant would most likely be amenable to, whether the best interests of the defendant and the security of the public may require that the defendant be placed in secure detention or under supervision, and whether there are facilities available for treatment and rehabilitation of the defendant; whether there is evidence that the charged offense included violence or was otherwise committed in an aggressive and premeditated manner; the motivation for the commission of the charged offense; the age of the defendant and of any codefendant or victim; the previous history of the defendant, including any criminal history and any other prior antisocial behavior or pattern of physical violence; the sophistication and maturity of the defendant as determined by factors such as home, employment, school activities, emotional attitude, and pattern of living; whether any victim wishes to address the parties and mediator during mediation; and other matters that the court believes relevant.

*Id.*

230. *Id.*

231. *Id.*

232. MONT. CODE ANN. § 46-1-501 to 46-1-507 (2007).

233. Assemb. 835, 230th Legis. Sess. (N.Y. 2007). This same bill was proposed in 2005, but was not enacted. Assemb. 2190, 228th Legis. Sess. (N.Y. 2005). A handful of other states have already enacted bills which implement an ombudsman into local schools. ALASKA STAT. § 24.55.320 (2006); D.C. CODE § 38-351 (2001); DEL. CODE ANN. § 4112A (LexisNexis 1999); WASH. REV. CODE ANN. § 43.06B.010 (West 2007).

234. Assemb. 835, 230th Legis. Sess. (N.Y. 2007).

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

results of the investigations relating to those complaints, and recommendations regarding how to improve the environmental, health, and safety conditions of the public schools.<sup>239</sup>

### *G. Texas House Bill 3578*<sup>240</sup>

This bill, introduced to the Texas legislature on March 9, 2007, allows employers to appoint ombudsmen to implement private dispute resolution programs for workplace and organizational disputes.<sup>241</sup> The purpose of the dispute resolution programs is to resolve disputes while providing employees with a confidential forum to voice conflicts and concerns.<sup>242</sup> Ombudsmen must be neutral and independent, have direct access to senior management, and not be responsible for any of the employer's essential business functions.<sup>243</sup> The bill prohibits ombudsmen programs from receiving notice of claims against the employer, creating records of confidential information for the employer, or conducting formal investigations for the employer.<sup>244</sup> Employers must ensure confidentiality and privacy by providing appropriate procedures and locations for ombudsman services.<sup>245</sup> To further ensure the confidentiality of employee participants, the bill allows these ombudsman programs to withhold confidential information even in the face of a subpoena, unless disclosure would prevent an imminent threat of serious harm.<sup>246</sup> The bill, authored by Representative Patrick Rose and Representative Eddie Rodriguez, was left pending in the Jurisprudence Committee on May 18, 2007.<sup>247</sup>

### *H. Wisconsin Assembly Bill 451*<sup>248</sup>

This bill was introduced into the Wisconsin Assembly on July 12, 2007, as an amendment to the Municipal Employment Relations Act.<sup>249</sup> Current Wisconsin law gives municipal employees the right to form and join labor organizations and participate in collective bargaining with employers.<sup>250</sup> During negotiations in the midst of a contract hiatus, employers are prohibited from unilaterally changing certain employment terms that are the subject of collective bargaining—wages, hours, and conditions of employment.<sup>251</sup> As of now, the obligation to arbitrate

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239. *Id.*

240. H.R. 3578, 80th Leg., Reg. Sess. (Tex. 2007).

241. H.R. 3578, 80th Leg., Reg. Sess. (Tex. 2007), Bill History, available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=80R&Bill=HB3578> (last visited Oct. 30, 2007).

242. H.R. 3578, 80th Leg., Reg. Sess. (Tex. 2007).

243. *Id.*

244. *Id.*

245. *Id.*

246. H.R. 3578, 80th Leg., Reg. Sess. (Tex. 2007), Bill Analysis, available at <http://www.capitol.state.tx.us/tlodocs/80R/analysis/pdf/HB03578H.pdf> (last visited Oct. 30, 2007).

247. H.R. 3578, 80th Leg., Reg. Sess. (Tex. 2007), Bill History.

248. Assemb. 451, 98th Leg., Reg. Sess. (Wis. 2007).

249. Assemb. 451, 98th Leg., Reg. Sess. (Wis. 2007), Bill History, available at <http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=W1:Default&d=billhist&jd=top> (last visited Oct. 30, 2007).

250. WIS. STAT. § 111.70(2) (2006).

251. *Id.*



grievances is not a required subject of collective bargaining.<sup>252</sup> The bill would require employers to honor grievance arbitration agreements in the interim period after one collective bargaining agreement expires and before a new collective bargaining agreement takes effect.<sup>253</sup> Employers would be forced to essentially put grievance arbitration agreements on equal footing with other mandatory subjects of collective bargaining while a new collective bargaining agreement is being negotiated. As of July 12, 2007, the bill was in the Assembly committee on Urban and Local Affairs.<sup>254</sup>

### III. CATALOG OF STATE LEGISLATION

The following is a state-by-state list of measures introduced from January 1, 2007 to November 15, 2007 concerning alternative dispute resolution.

#### Alabama

*Bills Enacted* – None.

*Other Legislation* – H.B. 563 (provides for reimbursement of expenses incurred by labor organizations representing nonmembers), H.B. 657 (provides that a mediator may not be compelled to testify concerning proceedings), H.B. 818 (creates a panel of arbitrators for Jefferson County), S.B. 90 (provides that a mediator may not be compelled to testify concerning proceedings), S.B. 160 (provides for reimbursement of expenses incurred by labor organizations representing nonmembers).

#### Alaska

*Bills Enacted* – None.

*Other Legislation* – H.B. 92 (removes the victim's advocate from the jurisdiction of the legislative ombudsman).

#### Arizona

*Bills Enacted* – H.B. 2255 (provides that pharmacy quality assurance records are not subject to subpoena or discovery in an arbitration or civil proceeding), H.B. 2263 (concerns Children's Protection Services, including the right to participate in a mediation program), H.B. 2563 (concerns the State Ombudsman; pertains to access to records), S.B. 1054 (concerns arbitration of claims, jurisdictional limits for submission of disputes to superior court, and compensation for arbitrators), S.B. 1546 (creates a condominium recovery fund including arbitration).

252. Assemb. 451, 98th Leg., Reg. Sess. (Wis. 2007), Bill Analysis, available at <http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=WI:Default&d=billhist&jd=top> (last visited Nov. 15, 2007).

253. Assemb. 451, 98th Leg., Reg. Sess. (Wis. 2007).

254. Assemb. 451, 98th Leg., Reg. Sess. (Wis. 2007), Bill Analysis, available at <http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=WI:Default&d=billhist&jd=top> (last visited Nov. 15, 2007).

*Other Legislation* – S.B. 1324 (concerns foster youth ombudsman).

### Arkansas

*Bills Enacted* – None.

*Other Legislation* – None.

### California

*Bills Enacted* – A.B. 771 (relates to the designation of agricultural working groups to work toward agriculturally related conflict resolution).

*Other Legislation* – A.B. 523 (provides for arbitration between the University of California Regents and contractors), A.B. 526 (enacts the Excluded Employee Mediation Act), A.B. 567 (requires Common Interest Development Bureau to aid and assist in resolving any disputes involving common interest development), A.B. 1726 (specifies that an interpreter is required for court-provided alternative dispute resolution proceedings), S.B. 389 (requires the Department of Managed Health Care and Department of Insurance to implement an independent provider resolution system), S.B. 396 (authorizes an increase in court fees for dispute resolution programs to no more than \$12 per fee), S.B. 574 (provides that successor beer manufacturers that cancel existing wholesaler agreements must negate the value of the distribution rights in good faith).

### Colorado

*Bills Enacted* – H.B. 1034 (allows law students to represent clients before an arbitration panel), H.B. 1252 (Allocates the evidentiary burdens between surface owners and operators in any arbitration related to use of the surface for oil and gas operations), H.B. 1307 (amends the arbitration provisions of the Seed Act).

*Other Legislation* – None.

### Connecticut

*Bills Enacted* – S.B. 739 (provides independent arbitration by the Commissioner of Consumer Protection for vehicle lemon law claims).

*Other Legislation* – H.B. 5116 (allows an additional three months of negotiations on teachers' contracts before mandatory arbitration), H.B. 5175 (requires arbitrators to disregard municipal fund balances in calculating a town's ability to pay during binding arbitration), H.B. 5261 (allows towns to reject arbitration awards by a two-thirds vote, without limit), H.B. 5266 (expands the duties of the Office of Ombudsman for Property Rights to include arbitration), H.B. 5304 (promotes the informal resolution of condominium-related disputes), H.B. 5506 (allows legislative bodies of municipalities to intervene in binding arbitration proceedings), H.B. 5684 (provides that any person who commences a civil action or complaint alleging, without probable cause, that another party has failed to mediate or arbitrate a matter in good faith shall pay a penalty of five thousand dollars), H.B. 6287 (permits arbitration of child support matters), H.B. 6301 (makes binding arbitration rules and procedures for town employees the same as

the rules and procedures for state employees), H.B. 6302 (makes the system governing municipality arbitration the same as that governing the State), H.B. 6558 (appoints a dredging ombudsman in the Department of Environmental Protection), H.B. 7181 (creates a Cell Phone Bill of Rights including dispute resolution), H.B. 7190 (allows a subcontractor or supplier to a state highway or public works contract to sue the state, subsequent to mandatory mediations, in order to recover damages), S.B. 465 (establishes a business ombudsman), S.B. 600 (requires municipalities to use the same binding arbitration procedure as the state), S.B. 615 (authorizes individuals to serve as mediators in land disputes after successful completion of an approved course of study).

### Delaware

*Bills Enacted* – S.B. 69 (confers jurisdiction upon the Court of Common Pleas to enforce and enter judgment on arbitration agreement relating to contracts to provide consumer credit), H.B. 92 (creates a low-cost arbitration process to resolve payment disputes between health care providers and insurance carriers), S.B. 36 (specifies the mediation and arbitration process under the Public Employment Relations Act).

*Other Legislation* – H.B. 6 (creates an Office of State Ombudsman).

### Florida

*Bills Enacted* – H.B. 311 (provides for enforceability of will or trust provisions requiring arbitration or certain disputes), S.B. 902 (provides for dispute resolution and arbitration relating to community associations), S.B. 978 (revises provisions regarding presentation of testimony and evidence in court-order, non-binding arbitration proceedings and awarding costs of trial de novo following arbitration against the requesting party), S.B. 1852 (creates exemption from public-records requirements for information concerning employees seeking assistance from Employee Assistance and Ombudsman Office).

*Other Legislation* – H.B. 13 (changes Florida's current Lemon Law to make filing for consumer claims arising during the Lemon Law rights period discretionary rather than mandatory), H.B. 433 (revises provisions regarding dispute resolutions involving community associations), H.B. 817 (provides for arbitration relating to title insurance), H.B. 867 (requires instructional staff of each public middle school to teach a comprehensive course in conflict resolution to students in grade six), H.B. 943 (provides for dispute resolution regarding interstate insurance products), H.B. 1167 (relates to court specialized dispute resolution divisions), H.B. 1351 (revises provisions regarding presentation of testimony and evidence in court, nonbinding arbitration proceedings and awarding costs of trial de novo following arbitration against the requesting party), S.B. 1502 (authorizes . . . agreements for cross-circuit conflict representation as part of any alternate models for provision of criminal and civil due process services and representation of indigents), S.B. 1782 (provides nonadversarial alternative dispute-resolution procedure for handling marine insurance claims), S.B. 1936 (provides for enforceability of will or trust provisions requiring arbitration of certain disputes), S.B. 2692 (regards pilot programs of courts establishing specialized divisions for adjudica-

tion and resolution of complex . . . disputes), S.B. 7094 (creates exemption from public-records requirements for information concerning employees seeking assistance from Employee Assistance and Ombudsman Office).

### Georgia

*Bills Enacted* – H.B. 2 (provides that if a municipality proposes to annex property in which certain services are provided by the county or which is included in the county comprehensive zoning plan that county may demand arbitration), H.B. 369 (relates to binding arbitration regarding child custody proceedings).

*Other Legislation* – S.B. 18 (adds municipal courts to the list of courts that may charge additional filing fees for civil actions and cases filed to fund alternative dispute programs), H.B. 117 (provides for dispute resolution for claims involving motor vehicle trade practices), S.B. 201 (creates family law arbitration).

### Hawaii

*Bills Enacted* – S.B. 1654 (establishes requirements for condominium management dispute resolution).

*Other Legislation* – H.B. 1087 (clarifies administrative hearing process as a method of alternative dispute resolution in condominium cases), H.B. 1382 & S.B. 1468 (provides for alternative dispute resolution to resolve controversies arising from workers' compensation claims), H.B. 1396 & S.B. 1482 (modifies the factors that the arbitration panel must consider in interest arbitration decisions), H.B. 1795 (requires mediators to provide written notification of the status of a mediation request to all parties named in the request; provides for administrative hearing for disputes unresolved by mediation), S.B. 121 (repeals mandatory arbitration for all collective bargaining units except firefighters and police officers), S.B. 922 (prohibits request for arbitration prior to 30 days from end of mediation or final decision of hearing officer if administrative hearing remedy has commenced), S.B. 1178 (training state employees in dispute resolution).

### Illinois

*Bills Enacted* – H.B. 1719 (requires disciplinary measures to be reviewable through arbitration in sheriff's offices with collective bargaining agreements).

*Other Legislation* – H.B. 501 (creates the Used Vehicle Buyer Protection Act providing for arbitration of disputes concerning the warranty), H.B. 1235 (amends the Illinois Educational Labor Relations Act), H.B. 1720 & S.B. 1295 (require discharge and suspension hearings for fire and police personnel to be based upon impartial arbitration where a collective bargaining agreement exists), H.B. 1841 (provides for arbitration of disputes between Service Boards), H.B. 2284 & H.B. 3313 (amend medical malpractice arbitration section of Illinois Insurance Code), H.B. 2547 (amends notice section of the Employee Arbitration Act), H.B. 3480 (Mandatory Arbitration Fund), S.B. 449 & H.B. 992 (expand the scope of arbitration to include residency requirements of peace officers), S.B. 859 (makes a technical change in a section of the Illinois Educational Labor Relations Act concerning the Illinois Educational Labor Mediation Roster), S.B. 1076 (makes a technic-

al change in the Employee Arbitration Act concerning the service of process or notice), S.B. 1290 (requires disciplinary measures to be reviewable through arbitration in sheriff's offices with collective bargaining agreements), S.B. 1528 (expands scope of arbitration with respect to fire fighters and fired department or district paramedics).

### Indiana

*Bills Enacted* – None.

*Other Legislation* – H.B. 1088 & H.B. 1491/S.B. 167 (establish negotiation, mediation, factfinding, and binding arbitration procedures for certain governmental employees and non-certified employees of schools who form unions), H.B. 1133 (collective bargaining for police officers and firefighters), H.B. 1153 & H.B. 1203 (state employees' submission of decisions to binding arbitration for review), H.B. 1325 (concerning homeowners associations and arbitration of disputes), S.B. 26 (collective bargaining for certain state employees), S.B. 27 (requires mediation to resolve homeowners association disputes over elections of directors or officers), S.B. 393 (concerning state employees' choice of arbitrators).

### Iowa

*Bills Enacted* – None.

*Other Legislation* – H.F. 221 (mediation of unfair or discriminatory practice claims based upon the wearing of certain apparel), H.F. 643 & H.F. 838 (disputes in horse racing and gambling), S.F. 413 (authorizes the negotiating of fair share fees in collective bargaining agreements and submission to arbitration), S.F. 459 (dispute resolution for interstate compact on placement of children).

### Kansas

*Bills Enacted* – None.

*Other Legislation* – H.B. 2133 (establishes a two-tier informal dispute resolution procedure for medical fire inspections at health care and assisted living facilities).

### Kentucky

*Bills Enacted* – H.B. 259 (amends KRS 325.360 to permit the board to informally resolve the matter through mediation).

*Other Legislation* – H.B. 62 (requires the board to provide guidelines for dispute resolution for employees that attempt to resolve any work-related complaint or penalization), H.B. 318 (authorizes the board to create a bureau of mediation), H.B. 505 (proposal to submit for a vote an amendment to the Constitution of Kentucky that would require medical malpractice claims to be submitted for alternative dispute resolution).

Louisiana

*Bills Enacted* – S.B. 256 (provides for venue of litigation or arbitration regarding a motor vehicle credit transaction), H.B. 178 (provides for Children's Code issues to be referred to mediation).

*Other Legislation* – H.B. 442 (authorizes the attorney general to mediate public records disputes), H.B. 650 (provides for the referral of a case to mediation by the court).

Maine

*Bills Enacted* – H.P. 508 (establishes a mediation process for landlord-tenant disputes), H.P. 851 (increases the per diem for members of the State Board of Arbitration and Conciliation), S.P. 516 (enhance fairness in arbitration).

*Other Legislation* – S.P. 257 (incorporates binding arbitration for monetary issues in collective bargaining for all state, county, and municipal employees), S.P. 555 (authorizes arbitration of property tax valuation disputes).

Maryland

*Bills Enacted* – None.

*Other Legislation* – H.B. 31 & S.B. 65 (authorizing a community or homeowner's association to institute alternative dispute resolution and assert its own claims in governmental proceedings), H.B. 902 & S.B. 823 (establishing a task force to promote nonviolent and peaceful ways to resolve conflict), H.B. 1167 & S.B. 509 (require arbitration between police officers and City of Baltimore and specifies arbitration procedures for firefighters).

Massachusetts

*Bills Enacted* – None

*Other Legislation* – H.B. 900 & H.B. 947 (concerning automobile insurance property damage), H.B. 1813 (revising the Uniform Arbitration Act for commercial disputes), H.B. 1814 (making certain aspects of mediation uniform), H.B. 1824, H.B. 1830 & S.B. 1627 (concerning binding arbitration), H.B. 2530, H.B. 2542, H.B. 2791 & S.B. 1656 (providing binding arbitration for firefighters and police officers), H.B. 2552 (establishes binding arbitration), H.B. 2783 (concerning dispute resolution for emergency medical technicians), H.B. 2790 (providing for resolution of disputes at housing authorities), S.B. 231 (concerning credit dispute resolution), S.B. 342 (concerning arbitration hearings in teachers' dismissals), S.B. 370 (promoting alternative dispute resolution for students), S.B. 984 (authorizing and expanding Supreme Judicial Court's arbitration of municipal disputes), S.B. 1445 (concerning interest arbitration for state police association), S.B. 1536 (concerning interest arbitration for state employed health care professionals), S.B. 1657 (concerning resolution of collective bargaining disputes).

Michigan

*Bills Enacted* – None.

*Other Legislation* – H.B. 4039, H.B. 4455, H.B. 4533, H.B. 4805, S.B. 215, S.B. 424 & S.B. 608 (amending act which prohibits strikes by some public employees), H.B. 4213 & S.B. 165 (amending act which mandates arbitration of labor disputes for police and fire departments), H.B. 4757 & H.B. 4811 (amending act regulating labor disputes).

Minnesota

*Bills Enacted* – None.

*Other Legislation* – H.F. 259 (expanding grandparent visitation rights and requiring mediation), H.F. 739 (requiring award decisions from arbitration to include an explanation), H.F. 1126 & S.F. 1342 (appropriating money for the Red River mediation implementation), H.F. 1709 & S.F. 1885 (providing for offers of settlement prior to arbitration for public employees), H.F. 1904 & S.F. 1430 (requiring a report to legislature on community dispute resolution programs), H.F. 2217 (appropriates money for a study and assessment of alternative dispute resolution), H.F. 2432 (requires mediation therapy management care in certain situations), S.F. 1518 (providing for a study and assessment of alternative dispute resolution).

Mississippi

*Bills Enacted* – H.B. 1368 (prescribes types of state contracts that are subject to arbitration), S.B. 2324 (provides that the list of recommended conflict resolution and mediation materials developed by the state board of education shall be developed from evidence-based practices and positive behavioral intervention supports).

*Other Legislation* – H.B. 158 (requires tort disputes be submitted for mediation), H.B. 761 (authorizes the governor to execute the Interstate Compact for Juveniles), H.B. 835 (provides that the list of recommended conflict resolution and mediation materials developed by the state board of education be developed from evidence-based practices and positive behavioral intervention), S.B. 2557 (prescribes authorized curricula and materials for school district conflict resolution and peer mediation programs), S.B. 2752 (requires health care insurance contracts with providers to contain a dispute resolution mechanism), S.B. 2948 (prescribes types of state contracts that are subject to arbitration).

Missouri

*Bills Enacted* – None.

*Other Legislation* – S.B. 292 (revises the Interstate Compact for Juveniles), S.B. 297 (vehicle protection products), S.B. 641 (collective bargaining for public employees).

Montana

*Bills Enacted* – H.B. 437 (makes the inclusion of dispute resolution clauses mandatory in social services contracts), H.B. 629 (provides for mediation in criminal proceedings).

*Other Legislation* – H.B. 647 (provides workplace conflict resolution as job benefit), S.B. 393 (requires mediation of custody in dissolution of marriage).

Nebraska

*Bills Enacted* – L.B. 108 (relates to fee schedules for mediation services regarding fence disputes), L.B. 373 (provides for inadmissibility of apologies and statements of sympathy in civil actions regarding medical care or arbitration proceedings relating to civil actions).

*Other Legislation* – L.B. 467 (grants the ombudsman authority with respect to county jails), L.B. 606 (provides for court referral to mediation or other alternative dispute resolution).

Nevada

*Bills Enacted* – None.

*Other Legislation* – A.B. 399 (revises the provisions relating to the Office of the Ombudsman for Owners in Common-Interest Communities), A.B. 530 (creates the Office of Ombudsman of Consumer Affairs for Minorities), A.B. 571 (establishes certain alternative methods of dispute resolution in domestic relations cases), S.B. 292 (enacts the Uniform Mediation Act), S.B. 553 (provides dispute resolution process with regard to claims brought against contractors), B.D.R. 1114 (enacts the Uniform Mediation Act), B.D.R. 1204 (makes an appropriation to replenish the Tort Claim Fund following the binding arbitration award in favor of the plaintiffs in Addison v. State Public Works Board), B.D.R. 1243 (makes an appropriation to the Attorney General's Office for funding of the domestic violence ombudsman), B.D.R. 1375 (creates Office of Ombudsman of Consumer Affairs for Minorities).

New Hampshire

*Bills Enacted* – H.B. 89 (establishes a committee to study dispute resolution between local political subdivisions and public employees in New Hampshire), S.B. 170 (establishes an office of mediation and arbitration within the judicial branch).

*Other Legislation* – H.B. 677 (revises portions of the dispute resolution and due process hearing process in special education cases), L.S.R. 2387 (relates to public employee terms of employment, bargaining units, and dispute resolution).

New Jersey

*Bills Enacted* – None.



*Other Legislation* – A.B. 4333 (requires policy on use of alternative dispute resolution for State agencies; expands duties of Dispute Settlement Office of Department of Public Advocate), A.B. 4358 (among other things, provides that a judgment for child support shall be a lien against the net proceeds of civil judgments, arbitration awards, inheritances or workers' compensation awards), A.B. 4430 (establishes the New Jersey Board of Health Care Management, which includes arbitration procedures), A.B. 4560 (establishes timeframes for certain stages in interest arbitration procedures), S.B. 2566 (requires Council on Affordable Housing to conduct a public hearing if mediation to resolve objection to municipality's petition for substantive certification is unsuccessful), S.B. 2626 (revises law governing compulsory arbitration for public fire and police departments), S.B. 2816 (requires policy on use of alternative dispute resolution for State agencies; expands duties of Dispute Settlement Office of Department of Public Advocate), S.B. 2868 (requires binding arbitration in contract disputes between hospitals and health insurance carriers).

### New Mexico

*Bills Enacted* – H.B. 192 (relates to enacting the Mediation Procedures Act; establishes confidentiality for mediation communications; provides exceptions for disclosure of mediation communications), S.B. 479 (establishes the Office of Alternative Dispute Resolution in the Risk Management Division of the General Services Department; changes the name of the Governmental Dispute Resolution Act to the Governmental Dispute Prevention and Resolution Act), S.B. 69 (relating to the Uniform Commercial Code, provides that if the forum for an arbitration or mediation hearing chosen by the parties to a consumer lease is in a state in a foreign country other than the state in the foreign country in which the lessee resides at the time the lease agreement becomes enforceable or in which the goods are to be used, it is not enforceable), S.B. 574 (clarifies mechanics' and materialmen's lien rights, specifically allowing use of arbitration to enforce liens).

*Other Legislation* – H.B. 302 (makes appropriations to the University of New Mexico for the Utton Transboundary Resources Center; provides Ombudsman Services in Water Rights Adjudications), H.M. 78 (requests the board of regents of the University of New Mexico to name the Utton Transboundary Resources Center's ombudsman program after the Joseph M. Stell Water Ombudsman Program), S.B. 53 (makes an appropriation for a Children's Court Mediation Program in the Third Judicial District), S.B. 592 (relates to mediation; enacts the Mediation Procedures Act; establishes confidentiality for mediation communications; provides exceptions for disclosure of mediation communications), S.B. 594 (makes an appropriation to the University of New Mexico for the Utton Transboundary Resources Center to provide ombudsman services in pending stream adjudications).

### New York

*Bills Enacted* – A.B. 5396 (revises the provisions of existing law that governs impartial hearings or mediation for special education tuition reimbursement of a parent or person in a parental relationship), A.B. 5843 (amends the Civil Service

Law; relates to compensation, benefits and terms of employment for forest rangers; provides appropriations for the purpose of effectuating certain provisions; relates to collective bargaining and arbitration), A.B. 5844 (relates to arbitration regarding compensation, benefits, retirement and other terms and conditions of employment for peace officers), S.B. 1569 (extends certain provisions of existing law applicable to the resolution of labor disputes with a public employee organization within the metropolitan transportation authority), S.B. 1597 (extends the effectiveness of provisions establishing dispute resolution during collective negotiations for an additional 2 years under civil service law), S.B. 3827 (includes detective-investigators or racket investigators employed in the office of a county district attorney within the provisions relating to dispute resolution during collective bargaining with a public employer), S.B. 6324 (relates to compensation, benefits and conditions of employment for certain state officers and employees who are members of the security supervisors unit and who are not eligible for binding interest arbitration).

*Other Legislation* – A.B. 805 & S.B. 327 (repeals provision of the Civil Service Law relating to binding arbitration for state correctional officers), A.B. 801 (establishes dispute resolution procedures in the modular home industry), A.B. 835 (establishes the Office of Ombudsman for Public Schools to investigate and report upon complaints of environmental, health and safety conditions in public schools), A.B. 1115 (provides that a court shall modify an arbitration award if the award is subject to a valid offset provision), A.B. 1432 (enacts the Child Custody Reform Act to provide uniform statewide standards for litigation and mediation of child custody disputes), A.B. 1452 (requires assisted living residences to permit access to such facilities by the long term care ombudsman), A.B. 1733 (creates the land use mediation program and the court alternative dispute resolution service), A.B. 1804 (provides for binding arbitration in negotiations for certain members of the security services collective bargaining unit who are safety and security officers within the office of mental health, the office of mental retardation and developmental disabilities or the department of health), A.B. 1938 (provides that any decision or award made by an arbitrator as to the issues arbitrated in no-fault insurance cases shall be the sole remedy and no further remedy shall be permitted), A.B. 2186 & S.B. 1063 (establish factors that public arbitration panels for employees of the Triborough bridge and tunnel authority shall consider), A.B. 2724 (provides for mediation and counseling in matrimonial actions involving children), A.B. 3452 (establishes alternative dispute resolution as a possible technique to resolve public disputes), A.B. 3458 (creates the parent-mediation program for child custody disputes), A.B. 3783 (extends the effectiveness of certain provisions of law relating to the resolution of labor disputes), A.B. 3812 (provides for an expedited summary proceeding to recover possession of real property in the case of leases of vacation homes for three months or less), A.B. 3872 (amends the civil service law, in relation to extending the effectiveness of provisions establishing dispute resolution during collective negotiations), A.B. 3897 (repeals provision of the Civil Service Law relating to binding arbitration for State correctional officers), A.B. 4592 & S.B. 1301 (establishes that public employee discipline is a mandatorily negotiable term and condition of employment; ensures that any provisions pertaining to discipline contained within agreements or interest arbitration awards between public employers and public employee organizations are valid and enforceable), A.B. 4670 (allows for “simplified case resolution” in certain

cases), A.B. 5482 & S.B. 3232 (authorizes municipal legislative bodies to enact local laws and ordinances providing for mediation of land use decisions), A.B. 5653 (creates an eminent domain ombudsman), A.B. 5990 (provides arbitration process to determine if a public employee or organization has violated the no-strike provision of the Taylor Law; defers imposition of penalty until after arbitration process is completed and allows the arbitrator to consider mitigating factors which may have provoked the alleged strike), A.B. 6174 (provides for the use of binding arbitration for certain employee organizations), A.B. 6795 & S.B. 3491 (establishes various minimum distance requirements for operation of a retail service station by a crude oil refiner; provides for certain exemptions and for arbitration of disputes arising therefrom), A.B. 7045 & S.B. 573 (provides for binding arbitration of disputed terms during negotiations between racetracks having video lottery gaming and horsemen's associations), A.B. 7046 (repeals law relating to providing for limitations on binding arbitration for members of the state police), A.B. 7595 (provides that with respect to a serious personal injury action still permissible under the no-fault insurance system, the award or decision of an arbitrator or master arbitrator rendered in a no-fault arbitration will not constitute a collateral estoppel of the issues arbitrated), A.B. 7826 & S.B. 4148 (revises present law relating to arbitration to better reflect the provisions of the Uniform Arbitration Act), A.B. 7985 & S.B. 4700 (regarding manufactured home park rent increases, creates a court alternative dispute resolution service), A.B. 8342 (provides procedures for resolution of disputes between a public employer and Suffolk County Park Police), A.B. 8374 & S.B. 6129 (provides interest arbitration jurisdiction to public employment relations board in event of disputes reaching impasse in collective negotiations between the state and the public employee union representing state employees in the professional, scientific and technical services unit), A.B. 8742 (provides procedures for hearings and arbitration on charges relating to school superintendents), A.B. 9209 (provides for the allocation of federal monies received by local long term care ombudsman programs for work performed as a patient care ombudsman), A.B. 9391 (relates to dispute resolution during collective bargaining), S.B. 686 (provides for the establishment of a state eminent domain ombudsman), S.B. 726 & A.B. 1268 (relating to health insurance claims, enacts measures to provide for the resolution of disputes), S.B. 1094 (relates to appointment of superintendents of union free school districts; provides procedures for hearings and arbitration on charges), S.B. 1231 (authorizes a limited profit housing company aggrieved by a decision regarding the maximum rentals permitted to be charged to seek arbitration of such decision), S.B. 1747 (provides that tenants have a right to renew retail commercial leases in cities having a population of one million or more; establishes commercial arbitration panel), S.B. 1967 (establishes the Uniform Mediation Act), S.B. 2913 (creates the Parent Mediation Program for child custody disputes), S.B. 3186 & A.B. 5958 (requires the public arbitration panel to which a dispute is referred to consider above all other factors the financial ability of the public employer to pay, as defined in this bill), S.B. 3608 (creates a court alternative dispute resolution service for homeowners in manufactured home parks who are confronted with unjustifiable rent increases), S.B. 3945 (relates to implementing an interest arbitration award between the state and employee organization representing certain members of the security supervisors unit, in relation to those members designated as peace officers), S.B. 4167 (relates to providing for limitations on binding arbitration for members of the state

police), S.B. 4785 & A.B. 803 (provides for binding arbitration for members of the security services collective bargaining unit who are security hospital treatment assistants in the office of mental health), S.B. 4920 (provides for the use of binding arbitration for certain employee organizations), S.B. 5076 (establishes that if an appraisal is ordered, it shall be limited to determination of value and amount of loss and shall proceed pursuant to the terms of the applicable appraisal clause of the insurance policy and not as arbitration), S.B. 5292 (prohibits discontinuance of fire protection services based upon disputes between towns and villages; requires mediation), S.B. 5385 (regarding manufactured home park rent increases, creates a court alternative dispute resolution service), S.B. 5773 (requires mandatory arbitration of no-fault motor vehicle insurance claims), S.B. 6100 & A.B. 930 (provides for binding arbitration in negotiations with all members who are designated as security services or security supervisors), S.B. 6298 (creates the independent office of child advocate to protect and promote legal rights for youth in programs and facilities operated by the office of children and family services; repeals certain provisions relating to the office of ombudsman), S.B. 6403 (Relates to dispute resolution during collective bargaining between a public employer and detective-investigators in the city of New York), S.B. 6494 (relates to dispute resolution during collective bargaining with a public employer and detective- investigators, criminal investigators or rackets investigators employed in the office of a district attorney of a county contained within a city with a population of one million or more).

### North Carolina

*Bills Enacted* – H.B. 21 (provides that fees for mediators are recoverable court costs), H.B. 730 & S.B. 735 (makes technical and substantive changes in the laws governing mediation of property insurance claims arising out of disasters), H.B. 1519 (modifies the law pertaining to the resolution of disputes between the Board of Education and the Board of County Commissioners regarding school funding), H.B. 1671 (Provides for the arbitration of claims for personal injury or wrongful death based on alleged negligence in the provision of health care), S.B. 728 (encourages mediation in district criminal courts; establishes a program within the Dispute Resolution Commission for the certification of mediators working in the district criminal courts).

*Other Legislation* –S.B. 952 (establishes the Mediator Certification Fund), H.B. 960 & S.B. 1360 (directs the Department of Justice and the Department of Environment and Natural Resources to study whether there is a need for an interstate compact to mediate any future interstate water supply issues), H.B. 1627 & S.B. 1494 (establishes a shellfish ombudsman), H.B. 1998 (appropriates funds for mediation centers).

### North Dakota

*Bills Enacted* – H.B. 1341 (relates to persons eligible for mediation under the state Agricultural Mediation service) H.B. 1342 (relates to duties of the credit review board for agricultural mediation services).

*Other Legislation* – H.C.R. 3004 (directs the Legislative Council to study whether the state should pursue nonadversarial alternatives for the resolution of family law disputes).

### Ohio

*Bills Enacted* – None.

*Other Legislation* – H.B. 377 (requires cable operators to participate in arbitration regarding disputes with providers of competing video programming), S.B. 59 (establishes a pilot program mandating arbitration for claims of medical negligence prior to the filing of a complaint).

### Oklahoma

*Bills Enacted* – S.B. 738 (lists procedures governing accommodations for residents displaying criteria under the Home Care Act or Hospice Licensing Act), H.B. 1211, 1212, & S.B. 221 (relate to the Merit Protection Commission).

*Other Legislation* – S.B. 48 (directs Board of Health to designate an ombudsman), S.B. 222 (relates to the Merit Protection Commission).

### Oregon

*Bills Enacted* – H.B. 2107 (construction contractors must notify Construction Contractors Board of certain adverse arbitration awards), H.B. 2139 (provides for confidential mediation for public body employees), H.B. 2318 (Tax Court Mediation Procedures), H.B. 2331 (reduces dispute resolution surcharges in county courts), S.B. 58 (fees for qualified arbitrators), S.B. 62 (Landscaping Business Bonds), S.B. 63 (requires landscaping businesses to notify State Landscape Contractor's Board of adverse arbitration awards), S.B. 94 (revises terminology pertaining to Construction Contractors Board dispute resolution), S.B. 248 (voids arbitration agreement between employer and employee under certain conditions), S.B. 253 (Administrative Law Judge mediation of workers' compensation), S.B. 256 (uninsured motorist insurance coverage arbitration), S.B. 484 (arbitration clauses and unlawful trade practices), S.B. 753 (ombudsmen regulations), S.B. 5525 (financial administration of Long Term Care Ombudsman).

*Other Legislation* – H.B. 2658 (capped payouts from fund for unpaid arbitration awards arising out of residential dwelling construction defects), H.B. 2661 (authorizes health care providers and health care recipients to enter into dispute resolution agreements), H.B. 2845 (prohibits arbitration clauses in student enrollment agreements), H.B. 3239 (adds hamlets and villages to list of governmental entities for purposes of intergovernmental arbitration), S.B. 360 (Health Care Ombudsman), S.B. 363 (Ombudsman for Mental Health Consumers), S.B. 415 (Ombudsman for Dependency Matters), S.B. 402 (modifies criteria used by arbitrators in public collective bargaining), S.B. 544 (arbitration as appeal to final orders of Director of Department of State Lands), S.B. 546 (arbitration of medical malpractice claim bifurcated into liability proceeding and damages proceeding), S.B. 588 (creates Compensation and Conservation Ombudsman), S.B. 659 (binding arbitration for damages suffered because of services of licensed professional),

S.B. 780 (arbitrator to resolve tie votes of Workers Compensation Management Labor Advisory Committee), S.B. 915 (ombudsman for public employees to investigate violations of whistleblower laws).

### Pennsylvania

*Bills Enacted* – None.

*Other Legislation* – H.B. 56 (provides for magisterial district judges serving as arbitrators), H.B. 422 (informal dispute resolution for long-term care nursing facilities and panel within the Department of Health), H.B. 558 (arbitration for loss to dwelling or personal property due to construction, design, or remodeling), H.B. 579 (Senior Housing County Ombudsmen), H.B. 1222 (interest on arbitration awards under Municipalities Financial Recovery Act), H.B. 1343 (mandatory arbitration under Medical Care Availability Act of 2002), H.B. 1369 (assessments and duties of the Pennsylvania Bureau of Mediation), H.B. 1625 (revises Uniform Arbitration Act); H.B. 1537 (Local Long-Term Care Ombudsmen), H.B. 1709 (Commonwealth Children’s Ombudsman and the Commonwealth Children’s Ombudsman Office), H.B. 1710 (provides for a First Class Cities Children’s Ombudsman Office), S.B. 20 (collective bargaining dispute resolution between public school employees and their employers), S.B. 64 (requires separately signed arbitration agreement for motor vehicle sales from dealers), H.R. 430 (designates October 18, 2007, as “Conflict Resolution Day”).

### Rhode Island

*Bills Enacted* – H.B. 6280 (no vacating arbitration award on the basis of a conflict with the powers of the Director of the Department of Corrections).

*Other Legislation* – H.B. 5152 (amends definition of “municipal employee” for municipal employees’ arbitration), H.B. 5170 (removes \$5,000 cap on payment of mediation expenses by state in negotiations between bargaining agent and school committees), H.B. 5188 (arbitration is preferred dispute resolution method between labor and management), H.B. 5330 (continuing collective bargaining agreement benefits to firefighters until new contract), H.B. 5363 (expands binding arbitration to monetary issues for teachers and non-teacher educational employees), H.B. 5513 (interest arbitration exemption for cities and towns regarding retirement benefits), H.B. 5527 (arbitration for municipal employees concerning hours, wages, rates of pay, and conditions of employment), H.B. 5656 (mediation for negative votes on school budgets), H.B. 5861 (mediation for school committee’s rejected request for supplemental budgetary allowance), H.B. 5890 (firefighter retirement benefits and arbitration), H.B. 6342 (mediation in Certificate of Need and Review process required for new health care equipment), S.B. 96 (labor contract benefits continue until new contract reached through arbitration or agreement), S.B. 211 (mediation as preferred dispute resolution method for labor controversies), S.B. 435 (state pays cost of compulsory mediation involving municipal employees), S.B. 436 (state pays total cost of compulsory mediation for school teachers), S.B. 499 & H.B. 5090 (labor arbitrator considering past practice for union contracts), S.B. 506 (payment of compulsory mediation costs for labor disputes), S.B. 530 (arbitration for establishment of uniform auto collision repair

labor rates), S.B. 675 (arbitration for municipal employee hours, wages, pay, and conditions of employment), S.B. 679 (continuance of firefighter benefits after retirement), S.B. 680 (continuance of collective bargaining benefits of expired contract for police), S.B. 803 (non-binding fact finding and mediation for negative vote by the appropriating authority of a school district), S.B. 878 (arbitration award cannot be vacated on basis of a conflict with the powers of Director of Department of Corrections), S.B. 907 (school committee collective bargaining agreements at mediation meetings).

### South Carolina

*Bills Enacted* – None.

*Other Legislation* – H.B. 3332 (appointment of attorneys as arbitrators of certain property damage liability claims).

### South Dakota

*Bills Enacted* – None.

*Other Legislation* – None.

### Tennessee

*Bills Enacted* – S.B. 1775 (mediation determining repayment of some unemployment compensation benefits).

*Other Legislation* – H.B. 1456 & S.B. 1074 (creates ombudsman's council for open government public records), H.B. 1981 & S.B. 2310 (requires mediation in all divorce proceedings), H.B. 1717 & 1833 (decreases time period for filing arbitration award), H.B. 2171 (requirements of arbitration award content).

### Texas

*Bills Enacted* – H.B. 555 (parenting plans and coordinators in suits affecting parent-child relationship), H.B. 888 (costs of obtaining employee medical records for ombudsman use), H.B. 1038 (relates to binding arbitration under Residential Construction Commission), H.B. 2291 (study of juvenile victim-offender mediation programs), H.B. 2542 (alternative dispute resolution under Office of Rural Community Affairs), S.B. 1318 (office of a long-term care ombudsman), H.R. 198 (mediation plan for authority-built homes).

*Other Legislation* – H.B. 471 (costs of obtaining employee medical records for ombudsman use), H.B. 497 (construction contract dispute resolution), H.B. 524 (binding arbitration of ad valorem tax protests), H.B. 1715 (office of long-term care ombudsman), H.B. 2291 (victim-offender mediation for juveniles), H.B. 2314 (confidentiality of certain ombudsman communications in employer alternative dispute resolution service), H.B. 2437 (pre-trial victim-offender mediation programs), S.B. 1167 (appeals arising under Federal Arbitration Act), H.B. 2665 (mediation of personal auto insurance disputes), H.B. 2750 (pre-trial victim-offender mediation in certain counties), H.B. 3091 (relates to dispute resolution), H.B. 3265 (dispute resolution and insurance policies), H.B. 3494 (appeal of ap-

praisal review board through binding arbitration), H.B. 3569 (relates to appeals in cases arising under Federal Arbitration Act), H.B. 3578 (confidentiality of ombudsman communications in employer alternative dispute resolution service), H.B. 3701 (relates to office of independent ombudsman of the Texas Youth Commission), H.B. 3885 (revises Civil Practice and Remedies Code regarding binding arbitration), S.B. 539 (filing by arbitrators after arbitration), S.B. 942 (collaborative law dispute resolution), S.B. 1181 (restrictions on arbitration awards under Fire and Police Employee Relations Act), S.B.1642 & H.B. 3194 (binding arbitration of appraisal review board orders), S.B. 1768 (costs of obtaining employee medical records for ombudsman use), S.B. 1782 (relates to arbitration proceedings), H.R. 1344 (recognizes establishment of the El Paso Association of Mediators).

### Utah

*Bills Enacted* – None.

*Other Legislation* – None.

### Vermont

*Bills Enacted* – S.B. 52 (attaches new Motor Vehicle Arbitration Board to the Department of Motor Vehicles).

*Other Legislation* – H.B. 395 (resolution of residential construction disputes), H.B. 232 (mandatory binding arbitration for teachers in collective bargaining), H.B. 237 (arbitration system for consumers seeking redress for sale of defective used motor vehicles).

### Virginia

*Bills Enacted* – None.

*Other Legislation* – H.B. 2219 (workers compensation dispute resolution system), H.B. 2851 (provides for a Children's Services Ombudsman), S.B. 919 (mandatory dispute resolution for custody, visitation, and child support), S.B. 947 (mandatory mediation if parents cannot submit custody plan in custody cases), S.B. 1013 (alternative dispute resolution for workers' compensation), S.B. 1380 (victims' rights restorative mediation).

### Washington

*Bills Enacted* – H.B. 1461 (dispute resolution in mobile home communities), H.B. 1693 (modifies time periods for collective bargaining by state ferry employees), H.B. 1916 (applies interest arbitration to certain child care providers), H.B. 2236 (trust and estate dispute resolution), S.B. 5053 (creates Office of Ombudsman for workers of industrial insurance self-insured employers), S.B. 5470 (marriage dissolution service informing parties of mediation), S.B. 5798 (issue resolution procedures as criterion for awarding highway construction contracts), S.B. 6099 (relates to a State Route Number 520 expansion impact plan mediator).



*Other Legislation* – H.B. 1202 (creates Office of the Ombudsman for Persons with Developmental Disabilities), H.B. 1492 (binding arbitration for personal injury protection coverage benefits in automobile insurance policies), S.B. 5547 (creates Office of the Ombudsman for Persons with Disabilities), H.B. 1736 (arbitration of State Patrol Officer wages binding on Governor and the State Patrol), H.B. 1996 (ombudsman services for individuals with mental disorders), H.B. 2174 (provides for arbitration to resolve medical staff membership and privilege disputes), H.B. 2326 (encourages candid and efficient negotiations in labor talks), H.B. 2348 (exempts labor relations material in mediation communications from public disclosure), S.B. 5295 (creates Office of Corrections Ombudsman), S.B. 5477 (Manufactured Mobile Home Community Registrations and dispute resolution), S.B. 5725 (health care providers' billing statements presumed reasonable when introduced in arbitration), S.B. 5783 (interest arbitration to certain care providers), S.B. 5850 (ombudsman services for individuals with mental disorders).

### West Virginia

*Bills Enacted* – H.B. 2763 (permits mediation or arbitration for financial examinations of insurers), S.B. 204 (cost of remaining petit jury costs into Parent Education and Mediation Fund).

*Other Legislation* – H.B. 2039 (prohibits mandatory arbitration clauses in consumer loan agreements by regulated consumer lenders in the state), H.B. 2308 (provides for liens on child support obligors proceeds from alternative dispute resolution awards), S.B. 195 (creates Office of Family and Foster Child Protection Ombudsman); S.B. 439 (binding arbitration for state employee grievance procedures).

### Wisconsin

*Bills Enacted* – None.

*Other Legislation* – A.B. 254 & S.B. 134 (alternative dispute resolution in municipal boundary disputes), A.B. 451 & S.B. 121 (relates to arbitration and fair-share agreements during collective bargaining).

### Wyoming

*Bills Enacted* – H.B. 124 (provides for arbitration and mediation of eminent domain disputes).

*Other Legislation* – H.B. 160 (requires arbitration or mediation for disputes between members of homeowner associations).